TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. 264.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER, HERMAN W. HECKLEMAN, AND THE CITY OF ALLEGHENY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF PITTSBURGH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED MARCH 23, 1907.

(20,635.)

(20,635.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 670.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER, HERMAN W. HECKLEMAN, AND THE CITY OF ALLEGHENY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF PITTSBURGH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 23, 1907.

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0 In the Supreme Court of Pennsylvania in and for the Western District.

COMMONWEALTH OF PENNSYLVANIA, *County of Allegheny, ss:*

Among the records and proceedings of the Supreme Court of Pennsylvania, in and for the Western District, the following may be found as matter of file and of record at No. 22 Oct. Term, 1907, to wit:

1 *Copy of Docket Entries.*

In the Court of Quarter Sessions of Allegheny County, Pennsylvania.

No. 71, December Sessions, 1905, Miscellaneous.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURG FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

On the 17th day of February, 1906, the petition of the City of Pittsburgh, by its Mayor, was presented to the Court representing:—

That the citizens of Pittsburgh and Allegheny are contiguous to each other and both situated in the County of Allegheny, and it is desired that the City of Allegheny, which is the lesser city,
2 shall be annexed to and consolidated with the City of Pittsburgh, which is the greater city, and thus making one consolidated city.

That by Ordinance of the City of Pittsburgh, approved 14th day of February, 1906, a certified copy of which is attached, the Mayor of the City of Pittsburgh was directed to present a petition to this Court, praying that the cities of Pittsburgh and Allegheny may be united and become one city in the manner and under the terms and provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than Boroughs, in one municipality; providing for the consequences of such consolidation the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," approved the 7th day of February, 1906.

The boundaries of the proposed consolidated city are as follows:—

Beginning at a point in the center of the Allegheny River opposite the mouth of Shade's Run at Coleman Station and on the line
3 dividing the 21st Ward of the City of Pittsburgh from Penn Township; thence by said dividing line in a southerly direction to the line dividing the 41st Ward of the City of Pittsburgh from Penn Township; thence by said dividing line in an easterly

direction to the line dividing the 41st Ward of the City of Pittsburgh from Wilkins Township; thence by said dividing line in a southerly direction to the line dividing the 41st Ward of the City of Pittsburg from the Borough of Wilkinsburg; thence by said dividing line in a westerly direction to the line dividing the 37th Ward of the City of Pittsburgh from the Borough of Wilkinsburg; thence by said dividing line in a westerly direction to the line dividing the 21st Ward of the City of Pittsburgh from the Borough of Wilkinsburg; thence by said dividing line and the line dividing the 22nd Ward of the City of Pittsburgh from the Borough of Wilkinsburg and the Borough of Swissvale in a southerly direction to a point in the center of the Monongahela River at City Farm Station; thence in a westerly direction by the center of said River along the lines of the 22nd and 23rd Wards of the City of Pittsburgh to a point on the line dividing the 24th Ward of the City of Pittsburgh from Lower St. Clair Township; thence by said
4 dividing line and by the line dividing the 27th Ward of the City of Pittsburgh from Lower St. Clair Township, Borough of Mount Oliver and the Borough of Knoxville in a westerly direction to the line dividing the 31st Ward of the City of Pittsburgh from the Borough of Knoxville; thence by said dividing line in a westerly direction to the line dividing the 38th Ward of the City of Pittsburgh from the Borough of Knoxville; thence by said dividing line in a southerly direction to the line dividing the 38th Ward of the City of Pittsburgh from the Borough of West Liberty; thence along said dividing line in a westerly direction to the line dividing the 38th Ward of the City of Pittsburgh from the Borough of Montooth; thence by said dividing line in a northerly direction to the line dividing the 32nd Ward of the City of Pittsburgh from the Borough of Montooth; thence in a southwesterly direction to the line dividing the 32nd Ward of the City of Pittsburgh from the Borough of West Liberty, at Saw Mill Run; thence by said dividing line and a line dividing the 32nd Ward of the City of Pittsburgh from Lower St. Clair Township in a northerly direction to the line dividing the 35th Ward of the City of Pittsburgh from Lower St. Clair Township; thence by said dividing line in a southerly direction
5 to the line dividing the 35th Ward of the City of Pittsburgh from Union Township; thence by said dividing line in a westerly direction to the line dividing the 35th Ward of the City of Pittsburgh from Green Tree Borough; thence by said dividing line and the line dividing the 35th Ward of the City of Pittsburgh from Chartiers Township in a westerly direction to the line dividing the 39th Ward of the City of Pittsburgh from Chartiers Township; thence by said dividing line in a northeasterly direction to the line dividing the 40th Ward of the City of Pittsburgh from Chartiers Township; thence by said dividing line and the line dividing the 40th Ward of the City of Pittsburgh from the Borough of Sheridan and Chartiers Township in a northeasterly direction to a point in the center of Chartiers Creek on the line dividing the 40th Ward of the City of Pittsburgh from the Borough of McKees Rocks; thence by said dividing line in an easterly direction to the center of the Back

Channel of the Ohio River on the line of the City of Allegheny; thence by the center of said Back Channel of the Ohio River and the center of the Ohio River to a point opposite Jack's Run Station P. F. W. & C. R. W. and on the line dividing the 11th Ward of the City of Allegheny from the Borough of Bellevue; thence by said
6 dividing line in a northeasterly direction to the line dividing the 11th Ward of the City of Allegheny from Ross Township; thence by said dividing line in an easterly direction to the line dividing the 15th Ward of the City of Allegheny from Ross Township; thence by said dividing line in a northerly direction to line dividing the 15th Ward of the City of Allegheny from Ross Township; at Benton Avenue; thence by said dividing line in an easterly direction to line dividing the 15th Ward of the City of Allegheny from Ross Township, at Perrysville Avenue; thence by said dividing line in a northwardly direction to line dividing the 15th Ward of the City of Allegheny from Ross Township at Bradley Avenue; thence by said dividing line in an easterly direction to the line dividing the 15th Ward of the City of Allegheny from Reserve Township; thence by said dividing line in a southerly direction to line dividing the 14th Ward of the City of Allegheny from Reserve Township; thence by said dividing line in a northeastwardly direction to line dividing the 14th Ward of the City of Allegheny from Reserve Township at Evergreen Plank Road; thence along said dividing line in a southerly direction to line dividing the 14th Ward of the City of Allegheny from Reserve Township, opposite Kappa Alley; thence
7 by said dividing line in an easterly direction to a line dividing the 14th Ward, City of Allegheny from Reserve Township; thence by said dividing line in a southerly direction to line dividing the 14th Ward, City of Allegheny from Reserve Township at Lamar Street; thence by said dividing line in an easterly direction to line dividing the 14th Ward City of Allegheny from Reserve Township at Geyer Road; thence by said dividing line in a southerly direction to line dividing 14th Ward, City of Allegheny from Reserve Township; thence by said dividing line in an eastwardly direction to line dividing the 14th Ward, City of Allegheny from Spring Garden Borough; thence by said dividing line in a southerly direction to line dividing the 7th Ward, City of Allegheny from Spring Garden Borough; thence by said dividing line and by line dividing 7th Ward, City of Allegheny from Reserve Township in an easterly direction to line dividing the 7th Ward, City of Allegheny from Millvale Borough; thence by said dividing line in a southerly direction to the center of the Allegheny river; thence by said center of the Allegheny River in an easterly direction to the place of beginning.

THE CITY OF PITTSBURGH,
By W. B. HAYS, *Mayor.*

Witness:
H. W. MINNEMEYER,
City Clerk.

Eo Die, Ordinance of Council filed.

8 No. 71 Dec. Sessions, 1905. In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the said City of Pittsburg. Petition. Filed Feby. 17, 1906. W. B. Rodgers, City Solicitor.

9 In the Superior Court of Pennsylvania, Western District.

No. 37, April Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal of D. Hunter, Jr., Robert K. Cochrane, John H. Sauer, and Herman W. Heckleman from the Decree of the Court of Quarter Sessions for Allegheny County, at No. 71, December Sessions, 1905, Miscellaneous.

Petition of the City of Allegheny for Leave to Intervene and Become One of the Appellants in the Above Entitled Case.

To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania:

The petition of the City of Allegheny respectfully represents:

First. That at the election for the purpose of annexing and
10 consolidating the Cities of Pittsburgh and Allegheny, held pursuant to the order of the Court of Quarter Sessions of Allegheny County, Pennsylvania, on June 12th, 1906, the citizens of each and every ward in the City of Allegheny, said Wards being fifteen in number, polled a majority vote in opposition to the proposed annexation and consolidation, and the total vote in said City showed almost twice as many votes polled against annexation as in favor of it, there being 6,747 votes cast in favor of consolidation, and 12,307 votes cast against it.

Second. That under suspension of the Rules, on June 20th and 21st, 1906, the Select and Common Councils of the said City of Allegheny passed a resolution, entitled,

"Resolution authorizing and instructing the proper officers of the City of Allegheny to take legal action to prevent annexation to and with the City of Pittsburgh."

which was duly approved by the Mayor of said City on the 25th day of June, 1906, said resolution provided as follows:

"Whereas, a large majority of the citizens of the city of Allegheny are opposed to annexation to and with the City of Pittsburgh;

"And whereas, at an election held on the 12th day of June,
11 1906, to determine whether such annexation should be had, the citizens of every ward in the City of Allegheny polled a majority vote in opposition to annexation

Therefore be it resolved, That the proper officers of the City of Allegheny be, and they are hereby authorized, instructed and directed to take the necessary legal action, both in the Courts of the Commonwealth of Pennsylvania and the Courts of the United States of America, to prevent the unjust, unfair and illegal annexation with the City of Pittsburgh, and thereby sustain the will of the people of Allegheny as manifested at the polls."

Wherefore, your petitioner showing that a large majority of its citizens are opposed to said annexation, and that your petitioner is legally interested in the proceeding before your Honorable Court and a proper party thereto, prays your Honors to permit it to intervene and become one of the appellants in the said proceedings at the above number and term.

And it will ever pray, etc.

CITY OF ALLEGHENY.
By CHARLES F. KIRSCHLER, *Mayor.*

12 COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared Charles F. Kirschler, who being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct.

CHARLES F. KIRSCHLER.

Sworn and subscribed before me this 28" day of September, 1906.

J. L. TREFALLER, JR.,
Notary Public.

[SEAL.]

My Commission expires January 3, 1908.

13 *Order of Court.*

And now, to wit, October 1st, 1906, the foregoing petition presented, and upon consideration thereof, the prayer of the petitioner is granted, and it is ordered that the said City of Allegheny be permitted to intervene and become one of the appellants in said proceedings at No. 37, April Term, 1907, and that the record be amended accordingly.

BY THE COURT.

14 Superior Court of Pennsylvania, Western District. No. 37 April Term, 1907. In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh. Petition of the City of Allegheny for Leave to Intervene and Become One of the Appellants in the Above Entitled Case. Filed Sep. 28, 1906. Superior Court, Fifth District.

15 EXHIBIT "B."

In the Name and by Authority of the Commonwealth of Pennsylvania.

(Coat of Arms.)

Executive Department.

Proclamation.

By virtue of the authority vested in me by Article IV, Section 12, of the Constitution, I, Samuel W. Pennypacker, Governor of Pennsylvania, do hereby convene the General Assembly of the Commonwealth in extraordinary session, to meet in the Capitol, at Harrisburg, on Monday, January 15th, A. D. 1906, at 2 o'clock p. m. of that day, to consider legislation upon the following subjects:

First. To enable contiguous cities in the same counties to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate city governments.

Second. To increase the interest paid by banks, trust companies, and similar institutions for the use of State moneys; to impose proper limitations upon the amount of such moneys to be held by
16 each of such institutions; to make it a misdemeanor to pay or receive, to offer or request any money or valuable thing or promise for the use of such moneys other than the interest payable to the State; and to adopt such other measures as may be necessary for the protection of the public moneys.

Third. To reapportion the State into Senatorial and Representative districts.

Fourth. To provide for the personal registration of voters.

Fifth. To provide for the government of cities of the first class and the proper distribution of the power exercised by such municipalities.

Sixth. To designate the amount to be expended each year in the erection of county bridges, and to take such other measures in regard to them as safety may require.

Seventh. To abolish fees in the offices of the Secretary of the Commonwealth and the Insurance Commissioner.

Given under my hand and the great seal of the State, at the City of Harrisburg, this eleventh day of November, in the year
17 of our Lord one thousand nine hundred and five, and of the Commonwealth the one hundred and thirtieth.

[GREAT SEAL.] SAM'L W. PENNYPACKER.

By the Governor:
ROBERT McAFEE,
Secretary of the Commonwealth.

18

EXHIBIT "C."

COMMONWEALTH OF PENNSYLVANIA.

(Coat of Arms.)

EXECUTIVE CHAMBER, HARRISBURG.

Proclamation.

Whereas, An extraordinary session of the General Assembly of the Commonwealth of Pennsylvania has been called under authority of Article IV, Section 12 of the Constitution to meet in the Capitol, at Harrisburg on Monday, January 15th 1906, at 2 o'clock P. M. of that day.

Now, therefore, I, Samuel W. Pennypacker, Governor of the Commonwealth, do hereby designate the following additional subjects for the consideration of the General Assembly with a view to legislation at the said session with respect to them:

First. To revise the laws relative to Primary elections in such way as to provide for the holding of the primary elections of all political parties within the Commonwealth on the same day,
19 at the same time, under the supervision of properly constituted officers, and to make such changes in, or additions to, these laws as may seem advisable.

Second. To establish a civil service system, by means of which the routine offices and employments of the Commonwealth may be filled by appointments made after ascertainment of qualifications and fitness, and the incumbents of such offices may retain them during good behavior.

Third. To designate the uses to which moneys may be applied by candidates, political managers and committees in political campaigns, both for nominations and elections, and to require the managing committees and managers of all political parties to file with some designated official at the close of each campaign a detailed statement in writing, accompanied by affidavit of the amounts collected and the purposes for which they were expended.

Fourth. To enable cities that are now or may hereafter be contiguous or in close proximity, including any intervening land, to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate municipal governments. This fourth subject is a modification of the first subject in the original call, and is added in order that legislation
20 may be enacted under either of them as may be deemed wise.

Given under my hand and the Great Seal of the State, at the City of Harrisburg this ninth day of January, in the year of our Lord, one thousand nine hundred and six and of the Commonwealth the one hundred and thirtieth.

[SEAL.] SAM'L W. PENNYPACKER.

By the Governor:

ROBERT McAFEE,

Secretary of the Commonwealth.

Consolidation of cities.

An act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each.

Ordinance.

SECTION 1. Be it enacted, &c., That wherever in this Commonwealth, now or hereafter, two cities shall be contiguous or in close proximity to each other, the two, with any intervening land other than boroughs, may be united and become one by annexing and consolidating the lesser city, and the intervening land other than boroughs, if any, with the greater city, and thus making one consolidated city, if at an election, to be held as hereinafter provided, there shall be a majority of all the votes cast in favor of such union.

Petition.

SECTION 2. The councils of either of said cities may by ordinance direct that a petition be filed in the court of quarter sessions of the county in which such cities are situate, or two per centum of the registered voters of either of said cities may present their petition to said court, praying that the two cities, and any intervening land other than boroughs, shall be united and become one city. Thereupon the said petition shall be filed; and the court shall fix a time for the hearing thereof, not more than twenty days thereafter, and direct that notice be given to the mayor or chief executive officer of each of the said cities, and the clerk of the councils of each of said cities, and by publication in one or more newspapers published in either of said cities, and such other notice as the court may deem proper, including notice to one or more of the officers of whatever may be the municipal sub-division of the State in which any intervening land other than boroughs may lie.

Hearing.

Notice.

Publication.

Description of boundaries.

Appointment of civil engineer.

SECTION 3. The petition for annexation shall describe the boundaries of the proposed consolidated city; and immediately upon it being filed, the court shall appoint a civil engineer, whose duty it shall be to actually run, and mark by monuments, upon the ground and bound and boundary lines. The said civil engineer shall,

within the time designated by the court after such appointment, make report to the court, to which he shall attach a plot or draft of said boundary lines; and thereupon, if the court approve said plot or draft it shall order the same to be filed, and the same shall thereafter be considered as part of the record in said proceedings for consolidation.

Report approval.

SECTION 4. Any person interested may file exceptions to said petition prior to the day fixed for hearing. At such hearing any person in interest shall be heard; but if the court shall find that the petition and proceedings are regular and in conformity with this act, it shall order an election to be held in the said cities, to vote for or against the proposed consolidation, at which all the legal voters of either of said cities, and of the said intervening land, if any, shall be qualified to vote. If the order shall be made more than thirty days and less than ninety days before the next regular municipal election, such election shall be held at the said regular election; but, if not, then a special election shall be ordered to be held not less than thirty days after such order.

Exceptions to petition.

The court shall order an election.

Qualification of voters.

Special election.

SECTION 5. The court shall provide for such notice of the election as it may consider to be proper and legal, and shall order and direct that the county commissioners shall prepare separate ballots, for such election, upon which shall be printed in brief form a statement of the questions so submitted, followed by the words "Yes" or "No" and said commissioners shall provide for the placing of said ballots at the polling places, at and before the opening of the polls on the day fixed, and for separate boxes to receive said ballots when voted.

Notice of election.

Ballots.

Statement of question submitted.

SECTION 6. The election shall be held at the regular polling places, by the regular election officers, and in case of their absence, or the absence of any of them, their places shall be filled as provided by law; the said election shall be conducted during the hours provided for, and in accordance with the general election laws of the Commonwealth; and all lawful voters of either city, and also of the said intervening land, if any, may vote; and the returns of election shall be delivered to the Prothonotary of the court or courts of common pleas of the county and by him delivered to the judges of the court or courts of common pleas as provided by law, for computation, and the result thereof shall be certified by the proper offi-

Election, how conducted.

Lawful voters.

Returns.

Computation vote.

Certification of result.

cers of the said court or courts of common
25 pleas to the court of quarter sessions having jurisdiction of the proceedings.

Expenses, payment of.

The expenses incurred by the county commissioners, and other expenses of the election and proceedings under the petition, shall be paid by the city presenting the petition, or, in case the petition shall be by voters, then by the larger city.

Majority in favor of consolidation.

SECTION 7. If it shall appear by the vote, when computed and certified as aforesaid, that a majority of all the lawful voters of the two cities and the intervening land, voting upon such question, have voted in favor of the annexation or consolidation, the said court of quarter sessions

Decree.

shall enter a decree annexing and consolidating the lesser city, and any intervening land other than boroughs, with the greater city, so that they form but one city, and in the name of the greater

Majority against annexation.

or larger city; but if a majority of the electors, so voting, shall vote against annexation, the proceedings shall be dismissed, and the question of annexation shall not again be submitted to the vote of the electors for a period of less than two years from the date of such election.

SECTION 8. Each of the constituent cities, and the intervening land, if any, so consolidated, shall

Bonded and floating indebtedness.

pay its own floating and bonded indebted-
26 ness and liabilities of every kind, and the interest thereon, as the same existed at the time of annexation; and the councils of the con-

Tax levy.

solidated city shall levy, respectively, on the properties in each of the said cities and intervening land so consolidated, and as they existed at the time of annexation, a tax sufficient to provide funds for each to pay its own floating and bonded indebtedness and liabilities and interest, as the same may accrue. The court of quarter sessions

Court to ascertain indebtedness, etc.

is given jurisdiction to ascertain what the bonded and floating indebtedness, and liabilities and properties, and assets, of each of the said cities and the said intervening land may be; due notice being given, and an opportunity to be heard being allowed, to all parties in interest.

Rights of citizenship.

SECTION 9. All the citizens of each of the united cities and of the intervening land shall be entitled to and shall enjoy and exercise, full rights of citizenship in the said enlarged and consolidated city. All the rights of creditors and all liens, and all the rights of the constituent cities and the government of the intervening land, to enforce the payment of moneys due either, or of

contract liabilities, or of other claims or rights of property, existing in either city or in the
27 government of the intervening land at the time of the annexation, shall be preserved unimpaired to each; and each of the said cities and the government of the intervening land, for the purpose of enforcing its rights and claims in the premises, and also of having prior rights and claims enforced against it, shall be deemed in law to continue in existence.

Rights preserved.

Except as herein otherwise provided, all the property real, personal, and mixed, and rights and privileges of every kind, vested in or belonging to either of said cities or to the intervening land prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city: but nothing in this act, nor the consolidation itself, shall in any shape, manner or form be constructed as in any way extending or in any way enlarging any contract, franchise, privilege, or right or claim, theretofore granted or agreed to be granted by either of the said consolidated cities or the government of the intervening land, to any person or firm or partnership, or limited partnership, joint stock company or corporation, whomsoever or whatsoever; with this exception, all the ordinances of each of said cities shall be applicable in and to all the territory, of the enlarged city, until amended or repealed; and if there be any conflict by reason of different ordinances in the two cities, the ordinance of the larger city shall control: Pro-
28 vided, That the laws applicable to and governing the consolidated city shall in all cases be supreme.

Property rights and privileges vested in united city.

Contracts, franchises, etc., not extended nor enlarged.

Ordinances.

Proviso.

All moneys accruing, from time to time, from delinquent taxes prior to the annexation, and all assessments against private property for public improvements for which the contractors shall have been paid, shall be applied to the indebtedness of the city to which the same shall belong. In case of annexation, the court may appoint commissioners to ascertain the floating and bonded indebtedness of each of the said municipal subdivisons, at the time of annexation, including the share of the municipal indebtedness for which any intervening land may be liable, and also on account of all property, of every kind, owned or claimed by the cities or the share of the intervening land to any property owned by the municipal subdivision of the State of which it is a part,

Delinquent taxes and assessments.

Appointment of commissioners.

Duties of.

Account of moneys.

prior to and at the time of annexation. The court may also order a- account to be taken by the said commissioners of all moneys on hand or receivable, applicable to the payment of the floating or bonded indebtedness of the respective municipalities or of the intervening land, at the date of annexation. Such money shall be, respectively applied in payment of the floating or bonded indebtedness of the respective municipalities or of the intervening land: Providing, however, That if an increase in the indebtedness of the consolidated city shall hereafter be contemplated, that the total indebtedness of the constituent cities, and the share of the intervening land in its government indebtedness, together with the indebtedness of the consolidated city, thereafter incurred, shall be used in determining the amount of indebtedness that may be created under the provisions of the constitution relating to municipal indebtedness.

Amount of indebtedness.

Decree of the court.

After the commissioners have made report, the court shall, by its decree, fix the said indebtedness and liabilities, and also the properties and assets, of all kinds, at the time of the annexation belonging to each territory united in the consolidation.

Tenure of office.

SECTION 10. The consolidation shall not, of itself, deprive any elected officer of the respective city government, so united, of his office and compensation for the full term for which he shall have been elected; but in the meanwhile, and until their successors in the greater city can be lawfully elected, a temporary government is provided as follows: The councils already elected, of each of the said cities, shall be and are hereby consolidated and for the select and common council of the said consolidated city, with the powers as *as* such, and shall meet at the council chambers of the larger of the two cities. The mayor of the larger of the two cities shall be, for the term for which he shall have been already elected, the mayor of the consolidated or united city, with the powers as such, and all purposes whatsoever; and the mayor of the smaller city shall be the deputy mayor of the consolidated city, for the term for which he was elected as mayor of the smaller city, with the power to veto as hereinafter provided, and to perform such other duties as the mayor of the consolidated city shall require of him, and he shall also preside and act as mayor, in case the office of mayor of

Temporary government.

Councils consolidated.

Deputy mayor.

the consolidated city shall become vacant, by death or otherwise.

Every ordinance or resolution which relates solely and exclusively to the smaller city shall, before it takes effect be presented, duly engrossed and certified to the said deputy mayor for his approval. If he approves it, it shall then be presented to the mayor of the consolidated city for his approval. In case either the said deputy mayor or the said mayor shall not approve said ordinance or resolution, he shall return the same to the branch of councils wherein it originated, within ten days, or at the next meeting of councils after ten days have expired; and if
31 thereupon, each branch of councils pass the same, within five days of the receipt of such veto, by a vote of three fifths of all the members elected to each branch, said three fifths including a majority of all the members elected to each branch from the smaller city, it shall become effective as though it had been approved by the mayor and deputy mayor. Said ordinance or resolution shall, equally, become effective if it shall not be returned to council, as herein provided, within ten days after it shall have been presented to the said deputy mayor and mayor.

Approval of ordinances, etc.

Vetoes, etc.

The Departments of Public Safety, Public Works, Collector of Delinquent Taxes, Assessors, City Treasurer, City Comptroller, Law, Charities and Corrections, and Sinking Fund Commissions, of the larger and the lesser cities, hereby consolidated and respectively made one, for the consolidated city with the powers as such; and the heads of the departments, respectively, as appointed prior to annexation by the mayor of the larger city, or elected, shall be the heads of the departments of the consolidated city, with the power as such; and the respective heads of the departments, appointed by the smaller city, or elected, shall be
32 the assistant director or assistant head of each of said consolidated departments, respectively, but under the control and jurisdiction of the said heads of said departments.

City departments.

Heads of departments.

All the employees of all departments, and officers of each of the said cities, at the time of annexation, including the firemen and police, shall be regarded as the officers and employees of the consolidated city, and subject to the supremacy of the said mayor; but any one of such employees or officers, not elected by the people, may be, if in the opinion of the mayor of the consolidated

Officers and employees.

city, it shall be deemed advisable so to do, discharged; subject, however, to all the provisions of law relating thereto, governing cities of the class to which said consolidated city shall belong.

Expiration of term of office.

At the expiration of the term of office of the said officers, for which each has, before annexation, been elected by the people of each city, their successors shall be elected by the voters of the consolidated city; and said election shall be held at the municipal election immediately preceding such expiration, and the successors shall hold office under the laws regulating cities of the class to which the consolidated city shall then belong.

Election.

If the term of office of said officers shall
33 not expire at the same date, then the said election of their successors shall be held at the first regular municipal election which shall be held preceding the earliest date at which any one term expires. This election shall be of only such officers as the law then governing the consolidated city shall provide for. When the terms of office of the common councilmen of the greater and lesser city expire at the same time, the terms of all select councilmen shall also expire at that time. Whenever the terms of common councilmen in the larger and smaller cities do not expire in the same year, the terms of the common councilmen in the city which would first expire shall be and are hereby extended one year, and said councilmen shall continue in office for said extended term, at which time the terms of all select and common councilmen in said consolidated city shall expire. Before the expiration of the terms of said councilmen, as herein provided, the wards of said enlarged city shall be divided and consolidated, and the apportionment of the select and common councilmen made, in accordance with the laws regulating cities of the class to which the same belongs. At the regular municipal election immediately preceding the expiration of said terms, select and common councilmen shall be elected from all the wards of said consolidated city, according to law, as apportioned. The
34 select councilmen elected, at said election, from the even numbered wards, to serve for two years, and those elected from the odd numbered wards to serve for four years. Thereafter all councilmen shall be elected for the regular terms, as provided in the laws governing cities of the class to which said consolidated city shall belong.

Term of office of councilmen.

Consolidation and division of wards.

Apportionment.

Election.

For all purposes named in this section the intervening land, if any, between the two cities, shall be regarded as part of the larger city, and to belong to the ward next adjacent to it. The registered voters of said intervening land shall vote in such ward upon the question of consolidation.

Voters of intervening land.

SECTION 11. Whenever it shall happen that the said cities, and the intervening land, if any, to be united, are located in whole or in part in distinct counties, then the respective courts of quarter sessions of each county and the courts of common pleas of each county, as well as the commissioners and other officers of such county, shall have respectively, the jurisdiction and power, and each shall perform the duties hereinbefore enumerated in respect to the said consolidation, including all steps preceding and succeeding such consolidation, within the limits of each county, respectively.

When cities are located in distinct counties.

Jurisdiction.

35 If more than one election shall be held, the results of all the elections shall ultimately be certified to the court of quarter sessions of the county in which the larger city is located; and the question whether the two cities, and the intervening land, if any, shall be united and become one consolidated city, shall be determined by the majority vote of all the lawful voters of the said two cities, and of the intervening land, if any, cast at said election, duly held, for or against such consolidation, and the result shall be decreed by the court.

Result of election to be certified to court of Quarter Sessions.

Decree.

SECTION 12. Nothing in this act shall be construed to affect the common school laws applicable to either city or the intervening territory, at the time of annexation.

School laws.

All taxes and assessments to raise the money lawfully required by the proper authorities of the various school and sub-school districts, existing prior to the consolidation in said cities, and in said intervening land, if any, shall be levied, assessed and appropriated by the council of the enlarged city, and collected and paid over to them by the officers thereof.

Taxes and assessments in school districts.

Approved: The 7th day of February, A. D. 1906.

SAM'L W. PENNYPACKER.

36 The foregoing is a true and correct copy of the Act of the General Assembly No. 1.

ROBERT McAFEE,
Secretary of the Commonwealth.

37 No. 71, Dec. Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURG.

To the Honorable, the Judges of the Court of Quarter Sessions of Allegheny County, Pa.:

The Petition of the City of Pittsburgh, by its Mayor respectfully represents:

That the Cities of Pittsburgh and Allegheny are contiguous to each other and both situated in the County of Allegheny, and it is desired that the City of Allegheny, which is the lesser city, shall be annexed to and consolidated with the City of Pittsburg, which is the greater city, and thus making one consolidated city.

That by ordinance of the City of Pittsburg, approved 14th February, 1906, a certified copy of which is attached, the Mayor of the City of Pittsburgh was directed to present a petition to this
38 Court, praying that the cities of Pittsburgh and Allegheny may be united and become one city in the manner and under the terms and provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," approved the 7th day of February, 1906.

The boundaries of the proposed consolidated city are as follows:

Beginning at a point in the center of the Allegheny River opposite the mouth of Shade's Run at Coleman Station and on the line dividing the 21st ward of the City of Pittsburg from Penn Township; thence by said dividing line in a southerly direction to the line dividing the 41st ward of the City of Pittsburgh from Penn Township; thence by said dividing line in an easterly direction to the line dividing the 41st ward of the City of Pittsburgh from Wilkins Township; thence by said dividing line in a southerly direction to the oine dividing the 41st Ward of the City of Pittsburgh
39 from the Borough of Wilkinsburgh; thence by said dividing line — a westerly direction to the line dividing the 37th Ward of the City of Pittsburgh from the Borough of Wilkinsburg; thence by said dividing line in a westerly direction to the line dividing the 21st Ward of the City of Pittsburgh from the Borough of Wilkinburg; thence by said dividing line and the line dividing the 22nd ward of the City of Pittsburgh from the Borough of Wilkinsburg and the Borough of Swissvale in a southerly direction to a point in the center of the Monongahela River at City Farm Station; thence in a westerly direction by the center of said River along the lines of the 22nd and 23d Wards of the City of Pittsburgh to a point on the line

dividing the 24th Ward of the City of Pittsburgh from Lower St. Clair Township; thence by said dividing line and by the line dividing the 27th Ward of the City of Pittsburgh from Lower St. Clair Township, Borough of Mount Oliver and the Borough of Knoxville in a westerly direction to the line dividing the 31st Ward of the City of Pittsburgh from the Borough of Knoxville; thence by said dividing line in a westerly direction to the line dividing the 38th Ward of the City of Pittsburgh from the Borough of Knoxville; thence by said dividing line in a southerly direction to the
40 line dividing the 38th Ward of the City of Pittsburgh from the Borough of West Liberty; thence along said dividing line in a westerly direction to the line dividing the 38th Ward of the City of Pittsburgh from the Borough of Montooth; thence by said dividing line in a northerly direction to the line dividing the 32nd Ward of the City of Pittsburgh from the Borough of Montooth; thence in a southwesterly direction to the line dividing the 32nd Ward of the City of Pittsburgh from the Borough of West Liberty, at Saw Mill Run; thence by said dividing line and a line dividing the 32nd Ward of the City of Pittsburgh from Lower St. Clair Township in a northerly direction to the line dividing the 35th Ward of the City of Pittsburgh from Lower St. Clair Township; thence by said dividing line in a southerly direction to the line dividing the 35th Ward of the City of Pittsburgh from Union Township; thence by said dividing line in a westerly direction to the line dividing the 35th Ward of the City of Pittsburgh from Green Tree Borough; thence by said dividing line and the line dividing the 35th Ward of the City of Pittsburgh from Chartiers Township in a westerly direction to the line dividing the 39th Ward of the City of Pittsburgh from Chartiers township; thence by said dividing line in a
41 northeasterly direction to the line dividing the 40th ward of the City of Pittsburgh from Chartiers Township; thence by said dividing line and the line dividing the 40th ward of the City of Pittsburgh from the Borough of Sheridan and Chartiers Township in a northeasterly direction to a point in the center of Chartiers Creek on the line dividing the 4th Ward of the City of Pittsburgh from the Borough of McKees Rocks; thence by said dividing line in an easterly direction to the center of the Back Channel of the Ohio River on the line of the City of Allegheny; thence by the center of said back channel of the Ohio River and the center of the Ohio River to a point opposite Jack's Run Station P. F. W. & C. R. W. and on the line dividing the 11th Ward of the City of Allegheny from the Borough of Bellevue; thence by said dividing line in a northeasterly direction to the line dividing the 11th Ward of the City of Allegheny from Ross Township thence by said dividing line in an easterly direction to the line dividing the 15th Ward of the City of Allegheny from Ross Township; thence by said dividing line in a northerly direction to line dividing the 15th ward of the City of Allegheny from Ross Township, at Benton Avenue; thence by said divid-
42 ing line in an easterly direction to line dividing the 15th Ward of the City of Allegheny from Ross Township, at Perrysville avenue; thence by said dividing line in a northwardly direction

to line dividing the 15th ward of the City of Allegheny from Ross Township, at Bradley avenue; thence by said dividing line in an easterly direction to the line dividing the 15th Ward of the City of Allegheny from Reserve Township; thence by said dividing line in a southerly direction to line dividing the 14th ward of the City of Allegheny from Reserve Township; thence by said dividing line in a northeastwardly direction to line dividing the 14th Ward of the City of Allegheny from Reserve Township, at Evergreen Plank Road; thence along said dividing line in a southerly direction to line dividing the 14th ward of the City of Allegheny from Reserve Township, opposite Kappa alley; thence by said dividing line in an easterly direction to a line dividing the 14th ward, City of Allegheny from Reserve Township; thence by said dividing line in a southerly direction to line dividing the 14th ward, City of Allegheny from Reserve Township at Lamar street; thence by said dividing line in an easterly direction to line dividing the 14th ward, City of Allegheny from Reserve township at Lamar Street; thence by said dividing line in an easterly direction to line dividing the 14th ward, City of Allegheny from Reserve Township, at Geyer Road; thence by said dividing line in a southerly direction to line dividing 14th ward, City of Allegheny from Reserve Township; thence by said dividing line in an easterly direction to line dividing the 14th ward, city of Allegheny from Spring Garden Borough; thence by said dividing line in a southerly direction to line dividing the 7th ward, City of Allegheny from Spring Garden Borough; thence by said dividing line and by line dividing 7th ward, City of Allegheny from Reserve Township in an easterly direction to line dividing the 7th ward, City of Allegheny from Reserve Township in an easterly direction to line dividing the 7th Ward, City of Allegheny from Millvale Borough; thence by said dividing line in a southerly direction to the center of the Allegheny River; thence by said center of the Allegheny River in an easterly direction to the place of beginning.

43

THE CITY OF PITTSBURG,
By W. B. HAYS, *Mayor.*

Witness:
H. M. MINNEMEYER,
City Clerk.

44 ALLEGHENY COUNTY, *ss:*

W. B. Hays, Mayor of the City of Pittsburgh, being duly sworn, says that the statements of above petition are true as he verily believes.

W. B. HAYS, *Mayor.*

Sworn to and subscribed before me this 16th day of February, 1906.

[D. Dines, Notary Public, Pittsburg, Pa.]
DAVID DINES,
Notary Public.

My Commission Expires Jan. 19, 1907.

45 No. 388.

An Ordinance directing the Mayor of the City of Pittsburgh to file a petition in the Court of Quarter Sessions of Allegheny County, praying that the cities of Pittsburgh and Allegheny shall be united and become one city, as provided by Act of General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to enable cities that are now, or may hereafter be contiguous or in close proximity, to be united with any intervening land, other than boroughs, in one municipality, providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories and the enforcement of debts and claims due to or from each," approved February 7th, 1906.

SECTION 1. Be it ordained and enacted by the City of Pittsburg, in Select and Common Councils assembled, and it is hereby ordained and enacted by the authority of the same, That the Mayor of the City of Pittsburgh is hereby directed to file a petition in the Court of Quarter Sessions of Allegheny County praying that the cities of Pittsburgh and Allegheny shall be united and become one
46 city, as provided by Act of General Assembly of the Commonwealth of Pennsylvania entitled, "An Act to enable cities that are now, or may hereafter be contiguous or in close proximity, to be united with any intervening land, other than boroughs, in one municipality, providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories and the enforcement of debts and claims due to or from each," approved February 7th, 1906.

SECTION 2. That any ordinance or part of ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed, so far as the same affects this ordinance.

Ordained and enacted into a law in Councils, this 13th day of February, A. D. 1906.

JAMES S. WIGHTMAN,
President of Select Council.

Attest:
H. W. MINNEMEYER, JR.,
Clerk of Select Council.

R. B. WARD,
President of Common Council.

Attest:
JNO. E. GABLE,
Clerk of Common Council.

47 Mayor's Office, February 14th, 1906.

Approved:

W. B. HAYS, *Mayor.*

Attest:
WALTER R. BLACK,
Mayor's Secretary.

Recorded in Ordinance Book, Vol. 17, Page 368, 14th day of February, 1906.

PITTSBURGH, *February 14th*, 1906.

I do hereby certify that the foregoing is a true and correct copy or Ordinance No. 388, Series 1905-'06, as the same appears of record in the office of the City Clerk.

H. W. MINNEMEYER,
City Clerk.

48 S. C. File No. —. C. C. File No. —.

C. No. —.

No. —. Vol. —. Page —.

An Ordinance.

In — C. — 190– referred to Committee on —.

—— ——, *Clerk.*

In Committee on — — 190–, ordered to be returned to Councils with an affirmative recommendation.

—— ——, *Clerk.*

In — C. —, 190–, Rule suspended, bill read three times, and finally passed.

—— ——, *Clerk.*

In — C. —, 190–, Rule suspended, bill read three times, and finally passed.

—— ——, *Clerk.*

Presented by
—— ——.

49 *Order of Court.*

And now, 17th February, 1906, the within petition being presented to the Court, the same is directed to be filed and the Court fixes Thursday March 8, 1906, at 10 o'clock A. M., for the hearing of the petition and directs that notice be given to the Mayor of the City of Pittsburg and the Mayor of the City of Allegheny and the Clerk of the Councils of each of the said cities, and also that notice be given by publication in Pittsburgh Times, Pittsburgh Post and Pittsburgh Volksblatt.

Per Curiam.

50 In the Court of Quarter Sessions of Allegheny County, Pa.

No. 71, December Sessions, 1905.

IN THE MATTER OF THE PETITION OF CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

Notice is hereby given that the petition of the City of Pittsburgh was filed in the Court of Quarter Sessions of Allegheny County on 17th February, 1906, praying for the uniting, annexing and consolidating of the City of Allegheny to and with the said City of Pittsburgh, and the Court thereupon fixed Thursday, 8th March, 1906.

51 February 23rd, 1906, Proof of service of notice of time of hearing petition filed.
Mar. 7th, 1906, Exceptions and Answer filed.

And now, 8th March, 1906, this cause came on to be heard and exceptions having been filed, further hearing is adjourned to 10th March, 1906, at 10 A. M.

BY THE COURT.

And now, 10th March, 1906, the hearing of above case is adjourned until next Wednesday at 9:30 A. M.

BY THE COURT.

March 10th, 1906, Answer on City of Pittsburgh to Exceptions filed.
March 15th, 1906, Petitions of citizens of Allegheny City for Annexation to the City of Pittsburgh filed.
April 25th, 1906, Exceptions dismissed. *Eo Die,* Opinion of Court filed.

52 And now, to-wit: 30th April, 1906, it is ordered that an election be held in the Cities of Pittsburgh and Allegheny on Tuesday, June 12th, 1906, to vote for or against the proposed consolidation of the City of Allegheny to and with the City of Pittsburgh as prayed for in the petition in this case. It is further ordered that notice of said proposed election shall be given to the voters of said cities by advertisements in the form hereto annexed to *the* published under the direction of the Clerk of this Court in the following daily newspapers published in the City of Pittsburgh, viz: Pittsburgh Dispatch; Gazette Times; Pittsburgh Post; Pittsburgh Press; Pittsburgh Leader and The Sun, in the English language and Volksblatt and Freiheits Freund; and Pittsburgh Beobachter in the German language, which shall be inserted two times in each of said papers, to-wit: once in the Pittsburgh Dispatch and Pittsburgh Beobachter and within seven days of this Order; once in

the Gazette Times and Volksblatt and Freiheits Freund within fourteen days of this Order; once in the Pittsburgh Post and Pittsburgh Press within twenty days of this order; once in the Pittsburgh Leader and The Sun within thirty days of this order and once in each of said newspapers within three days of the election. It is further ordered that the County Commissioners shall pepare separate ballots for such election upon which shall be printed in
53 brief form a statement of the question submitted, followed by the words "Yes" or "No."

BY THE COURT.

And now, to-wit: May 2, 1906, the order entered in the above entitled case on April 30th, 1906, is hereby amended by including in the daily newspapers in which the notice of the election of June 12th, 1906 is to be published, the Pittsburg Chronicle Telegraph. And the Clerk of this Court is hereby ordered and directed to insert said notice in said newspaper once within twenty days of this order and once within three days of the election.

BY THE COURT.

54 And now, to-wit: May 2, 1906, Exceptions of Christ S. Knauer, D. Hunter, Jr., Robert Cochrane, John A. Sauer and Herman Heckleman are filed, and upon consideration thereof, the same are overruled and dismissed.

BY THE COURT.

June 9th, 1906, Proof of Publication of Election Proclamation filed by Volksblatt and Freiheits Freund.

June 12th, 1906, Proof of Publication of Election Proclamation filed by the Pittsburgh Leader.

June 13th, 1906, Proof of Publication of Election Proclamation filed by the Pittsburgh Sun, The Pittsburg Post, The Pittsburg Press, The Pittsburg Gazette, The Pittsburg Times, The Pittsburg Dispatch and the Pittsburgh Chronicle Telegraph filed.

June 14th, 1906, Proof of Publication of Election Proclamation by Pittsburger Beobachter filed.

55 In the Court of Quarter Sessions of Allegheny County.

No. 71, December Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

Exceptions and Answer.

To the Honorable the Judges of said Court:

The undersigned, Christ S. Knaur, D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckelman and all others

who may join with them, file the following exceptions and answer to the petition filed in this case, for uniting, annexing and consolidating the City of Allegheny to and with the City of Pittsburgh, and say:

1st. That they are residents and citizens, voters, tax payers and owners of real estate and personal property, within the City of Allegheny, County of Allegheny and State of Pennsylvania.

56 2nd. That the said City of Pittsburgh and the said City of Allegheny, are municipal corporations, located in the County of Allegheny and State of Pennsylvania, and under the laws of the state classifying cities, are classified and designated as cities of the second class.

3rd. That the petition filed in this case by the City of Pittsburgh, by its Mayor, prays that the City of Allegheny, the lesser city, shall be annexed to and consolidated with the City of Pittsburgh, the greater city, thus making one consolidated city, under and by reason and authority of the provisions of a certain act of the General Assembly of Pennsylvania, entitled "An Act to enable cities that are now or may hereafter be contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories and the enforcement of debts and claims due to or from each," which act of the General Assembly was approved February 7th A. D. 1906 (See copy hereto attached, marked Exhibit "A," and made part hereof;) said

57 petition further setting up that the said cities are contiguous and situate in the County of Allegheny.

4th. That the population of the City of Pittsburgh by the census of 1900 was 321,616 and that it has now a population of at least 350,000. That there were polled at the last mayoralty election in the said City, on February 20th, 1906, about 62,000 votes in round numbers.

That the population of the City of Allegheny by the census of 1900 was 129,896, and that it is probably about 150,000 at the present time; that there were polled at the last mayoralty election in the said city, on February 20th, 1906, about 24,000 votes, in round numbers.

5th. That the said two cities of Pittsburgh and Allegheny are the only two contiguous cities in the State of Pennsylvania, and are the only two contiguous cities that are situated in the same county in the said state; and that the said two cities are the only two cities in the said state that are in close proximity to each other; that the nearest distance in a direct line separating any other two cities in the State of Pennsylvania, is the distance of five miles separating the cities of Pittsburgh and McKeesport, between which two

58 cities there are several boroughs; so that there could be no consolidation or annexation of the Cities of Pittsburgh and McKeesport without including boroughs, unless an abnormal and shoestring consolidation should be effected by a circuitous and indirect connection, not contemplated by the Act of the General As-

sembly under which this petition was filed, and in such case, such circuitous and indirect connection would include towns.

6th. The City of Allegheny has improved its streets established its own system of electric lighting; and has established a satisfactory water supply. The City of Pittsburgh is largely in debt; has established large and extensive parks in the eastern part of the city; built expensive and costly boulevards; extensive and costly reservoirs for the supply of water; and is contemplating still greater expenditures of money in the cutting down and grading of the elevation of Fifth Avenue, known as the hump; and the construction of an extensive filtration plant; and a large expenditure of money in the purchase of the Monongahela Water Company plant; a plant owned by a private corporation; and the further expensive construction of an electric light plant to be owned by the City of Pittsburg,
59 the said city owning at the present time no light plant, it being supplied with light from a private corporation; and the further expenditure of various sums of money for the acquirement of advantages and property which the citizens of Allegheny now practically own and enjoy but which the citizens of Pittsburgh do not, and to acquire which would largely increase the indebtedness of the City of Pittsburgh, and if the City of Allegheny should be annexed to the City of Pittsburgh, the tax payers of Allegheny, including your respondents, will, in addition to the payment of the taxes necessary to pay and liquidate their own indebtedness, have to bear and pay their own proportion of the new indebtedness that must necessarily be created to acquire the facilities, properties and improvements, herein stated, in Pittsburgh; all of which would be of no benefit to the citizens and tax payers of Allegheny, including your respondents who now own and possess these advantages and privileges; and which will largely and unnecessarily increase the taxes of your respondents, as well as the taxes of the other citizens of Allegheny, without any material benefit to them whatever.

7th. That the petition filed in this case, describing the boundaries of the proposed consolidated city, includes the boroughs of
60 Elliott and Esplen, which are excluded under the act of assembly authorizing the filing of this petition; said boroughs being erroneously described in said petition as a part of the City of Pittsburgh; the proceedings had for the consolidation of said boroughs with the City of Pittsburgh under the Act of Assembly entitled "An Act for the annexation of any city, borough, township or part of township to a contiguous city, and providing for the indebtedness of the same" approved April 28th, 1903, P. L. 1903, page 332, being void for the reason that the said Act of Assembly is unconstitutional, it being contrary to Article 3, Section 7, Sub-division 2, of the Constitution of the State of Pennsylvania.

8th. The qualified voters of the City of Pittsburgh are nearly or quite three times the number of the qualified voters of the City of Allegheny. A large majority of the voters of the City of Pittsburgh are favorable to the annexation of the City of Allegheny to the City of Pittsburgh, while a large majority of the voters of the City of Allegheny are opposed to said annexation.

9th. That the Act of Assembly under which this petition
61 was filed, was passed at an extraordinary session called by the Governor of the State of Pennsylvania, on the eleventh day of November, 1905, to convene on the 15th day of January, 1906, at two o'clock P. M.; it being called by a proclamation which was issued under the provisions and by the authority of Article 4, Section 12, of the Constitution of the State of Pennsylvania. That the said proclamation, convening the General Assembly of the State of Pennsylvania, contained or designated certain subjects of legislation, in obedience to Article 3, Section 25, of the Constitution of the State of Pennsylvania, which provides "when the General Assembly shall be convened in special session there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling said session," among the subjects so designated the first being the following:

"First. To enable contiguous cities in the same county to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate city governments."

That no other proclamation convening the General Assembly of the Commonwealth in extraordinary session, except the one herein
62 recited, has been issued by the present Governor of the State of Pennsylvania; that said proclamation issued November 11th, 1905, convening the General Assembly of Pennsylvania, has not been annulled or abrogated by the Governor of Pennsylvania in any way; that the subject of legislation affecting cities designated in the words above set forth in said proclamation, issued November 11th, 1905, has not been amended, changed or in any manner annulled by the Governor of the State of Pennsylvania. See copy of the proclamation of the Governor, of November 11th, 1905, hereto attached and made part hereof, marked Exhibit "B."

That on the 9th day of January, 1906, the Governor of the State of Pennsylvania issued or promulgated a paper or more properly speaking, a letter, not addressed to the General Assembly of the State of Pennsylvania nor to any person or persons in particular, in which paper he recites the fact that an extraordinary session of the General Assembly of the Commonwealth of Pennsylvania has been called to convene at Harrisburg on January 15th, 1906, and in which paper he says:

"I, * * * do hereby designate the following additional sub-
63 jects for the consideration of the General Assembly with a view to legislation at the said session with respect to them," among which additional subjects so designated, the fourth or last one, is as follows, to wit:

"Fourth. To enable cities that are now or may hereafter be contiguous or in close proximity, including any intervening land, to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate municipal governments. This fourth subject is a modification of the first subject in the original call, and is added in order that legislation may be enacted under either of them as may be deemed wise." See copy of

said letter or paper, of January 9th, 1906, hereto attached and made part hereof, marked "Exhibit C."

As will be seen by an examination of the Act of Assembly under which this petition has been filed, the legislature did not legislate under authority of the proclamation convening the legislature, of November 11th, 1905, marked "Exhibit B," or the paper or letter of January 9th, 1905, marked Exhibit "C," because the Act of Assembly permits the consolidation of cities in different counties and excludes boroughs in any land intervening between cities in close proximity.

10th. The annexation of the City of Allegheny to the City
64 of Pittsburgh under the provisions of the Act of the General Assembly under which this petition is filed, changes the name of the City of Allegheny to City of Pittsburgh.

11th. The annexation of the City of Allegheny to the City of Pittsburgh, under the provisions of the Act of the General Assembly under which this petition is filed, attempts the incorporation of the City of Allegheny into the City of Pittsburgh and changes the charter of the City of Allegheny.

12th. The Act of Assembly under which this petition is filed, for the annexation of the City of Allegheny to the City of Pittsburgh, is in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of said Article 1, Section 9, Paragraph 10, of the Constitution of the United States, and therefore is unconstitutional.

65 13th. The Act of General Assembly under which this petition is filed, is in conflict with Article 5 of the Amendments to the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the value of the property of your respondents, and they, therefore, will be deprived of their property, in violation of said Article 5 of the Amendments to the Constitution of the United States.

14th. The Act of Assembly under which this petition is filed is in conflict with Article 14 of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear

in case the annexation takes place, will cause a large depreciation in the value of the property of your respondents.

65 15th. The proclamation of the Governor of Pennsylvania convening the General Assembly in special session does not designate the subjects of legislation embraced and contained within the Act of Assembly under which this petition is filed, and the said Act is therefore in violation of Article 3, Section 25, of the Constitution of the State of Pennsylvania, and is unconstitutional.

16th. If the paper, or letter, promulgated by the Governor of the State of Pennsylvania, on the ninth day of January, 1906, shall be held to be a call or authority for legislation thereunder, the said paper or letter does not designate the subjects of legislation embraced and contained within the Act of Assembly under which this petition is filed, which Act therefore is in violation of Article 3, Section 25 of the Constitution of the State of Pennsylvania and is unconstitutional.

17th. The Act of Assembly under which this petition is filed is local or special legislation, in conflict with Article 2, Section 7, Subdivision 2, of the Constitution of the State of Pennsylvania, and is unconstitutional.

18th. The Act of Assembly under which this petition is
67 filed, is local or special legislation, in conflict with Article 3, Section 7, Sub-Division 3, of the Constitution of the State of Pennsylvania, and is unconstitutional.

19th. The Act of Assembly under which this petition is filed, is local or special legislation, in conflict with Article 3, Section 7, Sub-Division 11, of the Constitution of the State of Pennsylvania, and is unconstitutional.

20th. The said Act of the General Assembly under which this petition is filed, is in conflict with Article 15, Section 1, of the Constitution of the State of Pennsylvania, because it permits and compels the consolidation of intervening land into a city which may be between cities in close proximity to each other, which intervening land may contain a town without a population of ten thousand, without a majority vote of the qualified voters of said intervening land or town, and is therefore unconstitutional.

21st. The proceedings in this case are irregular in that the petition includes in the territory to be annexed two boroughs and part of a township which, although under proceedings of the Court of Quarter Sessions of Allegheny County, they have been declared to
68 be a part of the City of Pittsburgh, yet the Act of Assembly under which said proceedings were had, known as the Goehring Law, approved April 28th, 1903 is in violation of Article 3, Section 7, Subdivision 2, of the Constitution of the State of Pennsylvania, and is unconstitutional.

22nd. The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those

of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city.

All of which is respectfully submitted.

CHRIST S. KNAUR.
D. HUNTER, JR.
ROB'T K. COCHRANE.
JOHN A. SAUER.
HERMAN W. HECKELMAN.

HARVEY HENDERSON,
WM. C. GILL,
STONE & STONE,
Solicitors.

69 STATE OF PENNSYLVANIA, *County of Allegheny:*

Before me, a Notary Public in and for the County and State aforesaid, personally appeared Christ S. Knaur, D. Hunter, Jr., Robt. K. Cochrane, John A. Sauer and Herman W. Heckelman, who being sworn according to law, deposes and says that the facts set forth in the above exceptions and answer are true to the best of their knowledge, information and belief.

CHRIST S. KNAUR.
D. HUNTER, JR.
ROB'T K. COCHRANE.
JOHN A. SAUER.
HERMAN W. HECKELMAN.

Sworn — and subscribed before me this 6th day of March, 1906.

[SEAL.] T. L. PILLOW,
Notary Public.

My appointment dated Jan. 16, 1905.
My Commission expires end next session Senate.

70 *Order of Court.*

And now, to wit, March 7th 1906, the above exceptions and answers in the above entitled case, having been presented in open court, and upon motion of Harvey Henderson, W. C. Gill & Stone & Stone of counsel for exceptants, it is ordered to be filed.

BY THE COURT.

71 No. 71 December Sessions, 1905. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny with the said City of Pittsburgh. Exceptions and answer. Harvey Henderson, Wm. C. Gill, Stone & Stone, Attorneys at Law. Filed March 7/06.

72 In the Court of Quarter Sessions of Allegheny County.

No. 71, December Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURG FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURG.

To the Honorable the Judges of said Court:

The City of Pittsburg, protesting and objecting that the so-called Exceptions and Answer filed in this Honorable Court on the 7th day of March, 1906, by and on behalf of Christ Knauer, D. Hunter, Jr., Rob't K. Cochrane, John A. Sauer, and Herman W. Heckelman are irregular, unauthorized and improper in so far as by the said so-called exceptions and answer, various averments are made as to various alleged facts; and the City of Pittsburgh also averring that the said allegations of fact contained in the said Exceptions and Answer are irrelevant and immaterial, and that the City of Pittsburg is not bound to answer or reply to the same and without waiving in
73 any way any one of said objections, but insisting upon the same, as aforesaid, makes answer to certain of the said allegations of fact as follows:

(1) The allegations in the Fifth Exception are denied as therein stated, though it is admitted that the two cities of Pittsburg and Allegheny are the only two cities in the state at the present contiguous, and it is true that Pittsburg is separated from McKeesport in a direct line a distance of about five miles, and that between the two cities are several boroughs.

It is true, however, that in many places in the State of Pennsylvania are large Cities which are rapidly growing in population, towns are growing into boroughs, and boroughs are growing into cities, and that today there are dozens of boroughs which may be organized as cities. That many of said boroughs are in close proximity to each other or to some adjoining city, and that the growth of the state and of the different boroughs and towns will
74 soon create a number of cities which will be contiguous, or in close proximity to each other, and which may be consolidated under the terms of said Act of Assembly under which these proceedings are instituted.

2. The averments in the Sixth Exception are denied as therein stated; but it is true that the City of Allegheny has to some extent improved its streets and has established a system of electric lighting. It is denied that it has established a satisfactory water supply, but on the contrary, the one now existing is very unsatisfactory.

It is admitted that the City of Pittsburg, (like the City of Allegheny), is in debt, and has established large and extensive parks in the eastern part of the City; has built extensive and costly boulevards and streets,—much better paved and maintained than are the streets and boulevards of the City of Allegheny; that the City of Pittsburg has made extensive and costly reservoirs for the supply of

water, and has heretofore contracted for, and is now erecting an extensive filtration plant for water, which is located on the Alle-
75 gheny side of the river and which can readily serve filtered water to Allegheny City. The City of Pittsburgh is in no way committed to any other or further improvements, though the greater city will probably find it greatly to the advantage of all parts of her territory to make many improvements.

Nor is it true that if the City of Allegheny be annexed to the City of Pittsburgh, the tax payers of Allegheny would, in addition to the payment of taxes necessary to liquidate its own indebtedness, have to pay taxes on account of the new indebtedness, which new indebtedness would be incurred for matters which would be of no interest to citizens and tax payers of Allegheny; nor is it true that the taxes of the new city will largely and unnecessarily increase the taxes of the tax payers of the City of Allegheny without any material benefit to them. On the contrary, the City of Allegheny will be much more benefited by its annexation to the City of Pittsburgh than the City of Pittsburgh itself. Allegheny City, and especially its streets and parks, are in a most deplorable condition, in no way comparing favorably with the streets and parks of the City of Pittsburgh,
76 although in natural facilities the parks and streets of the City of Allegheny should be as advantageous for the citizens of Allegheny as the latter are for the old City of Pittsburgh.

Real estate in Allegheny has fallen at least ½ in value in the last ten years, so that in many parts of the city it is impossible to either sell or rent property at fairly remunerative prices.

Instead of the annexation of Allegheny to Pittsburg being a detriment to the taxpayers of Allegheny it will be a decided benefit. Among the benefits to result from the annexed city will be the material reduction in the expenses of conducting the government of the two cities; the material reduction of taxation the benefits which always accrue to a much larger city covering more area and having more inhabitants and industries.

The improvement spoken of in the exception, of the completion of a water filtration plant, will enable the City of Allegheny to be supplied with pure, wholesome water, which at present it is not, there being no filtration plant in operation in the City of Allegheny.

77 (3) The averments of the Eighth Exception are denied as therein stated. A large majority of the property owners of Allegheny City are decidedly in favor of annexation to Pittsburgh. The present opposition thereto is mainly political, but the results of the election alone can determine how the majority of the people of Allegheny and Pittsburgh and the qualified voters thereof will vote, in favor of or against annexation.

(4) It is denied, as averred in the Twelfth Exception, that any contract exists between the City of Allegheny and the exceptants by which the exceptants are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny.

(5) It is denied that the annexation of the City of Allegheny to

the City of Pittsburgh will add additional taxes to the property of the exceptants and create additional burdens on the property of the exceptants without compensation, or that it will depreciate the value of the property of exceptants. On the contrary, the annexation of the City of Allegheny to the City of Pittsburgh will largely increase the value of the property of the exceptants, and the contem-
78 plation even of such annexation has already enhanced the value of the same.

(6) It is denied that by reason of the alleged additional taxes and burdens which the property of the exceptants will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of the exceptants. On the contrary thereof, the said annexation will largely increase the value of said property.

W. B. HAYS, *Mayor.*

ALLEGHENY COUNTY, *ss:*

Before me, came W. B. Hays, Mayor of the City of Pittsburgh, who being duly sworn according to law, says that the facts set forth in the foregoing answer are true and correct as he verily believes

W. B. HAYS,
Mayor of the City of Pittsburgh.

Sworn to and subscribed before me this 10th day of March, 1906.
[SEAL.] WILLIAM I. KING,
Notary Public.

My commission expires Feb. 2, 1910.

79 No. 71 December Sessions, 1905. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the said City of Pittsburgh. *Answer.* Filed March 10/06. W. B. Rodgers, City Solicitor.

80 In the Court of Quarter Sessions of Allegheny County.

No. 71, December Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

Exceptions.

And now, to-wit: the 2d day of May, A. D. 1906, come Christ S. Knauer, D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckleman, and through their attorneys, Stone & Stone, Harvey Henderson and W. C. Gill, file exceptions to the findings of law and order of court in this case as follows, to-wit:

1st. The Court erred in over-ruling the respondents' or exceptants'

exceptions to said petition, and dismissing the same, said exceptions being numbered from One to Twenty-two inclusive.

81 2d. The Court erred in finding that the Act of Assembly approved February 7, 1906, under which said petition for consolidation was filed, is unconstitutional.

3rd. The Court erred in finding that said Act of Assembly is within the proclamation of the Governor convening the Assembly in extraordinary session.

4th. The Court erred in finding that said Act of Assembly is not local or special legislation in conflict with Article 3, Section 7 of the Constitution of Pennsylvania.

5th. The Court erred in practically finding that in the first call for a special session by the Governor, the subject of legislating for the consolidating of cities was sufficient to authorize the Act of Assembly in controversy.

6th. The Court erred in finding that the second proclamation of the Governor cured the defects in the first, and justified the legislation in controversy.

7th. The Court erred in holding that because of the fact that there are boroughs contiguous to cities, which may in process of time become cities and be consolidated under this Act with contiguous cities, that therefore the Act is not local or special.

82 8th. The Court erred in ordering an election to be held in the said cities of Pittsburgh and Allegheny on June 12th, 1906, to vote for or against the proposed consolidation.

9th. The Court erred in finding that the Petition and proceedings were regular.

STONE & STONE,
HARVEY HENDERSON,
W. C. GILL,
Attorneys for Exceptants.

83 Quarter Sessions Court. No. 71 Dec. Sess. 1905. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the said City of Pittsburgh. Exceptions. And now, to-wit: May 2nd, 1906, the within exceptions are filed, and upon consideration thereof the same are overruled and dismissed. By the Court. Stone & Stone, Attorneys at Law.

84 No. 71, December Sess., 1905, Miscellaneous Docket.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

And now, this 16th day of June, 1906, it appearing that, pursuant to the order of this court made on April 30th, 1906, an election was held in the cities of Pittsburgh and Allegheny on the 12th day of June, 1906, and that the result thereof has been certi-

fied by the proper officers of the Courts of Common Pleas of the County of Allegheny to this Court, by which it appears that a majority of all the lawful voters of the said two cities, voting upon such question, have voted in favor of the annexation or consolidation of the City of Allegheny to and with the City of Pittsburgh, it is now ordered, adjudged and decreed that the City of Allegheny the lesser city, be annexed and consolidated with the city of Pittsburgh the greater or larger city, so that they form but one city and in the name of the City of Pittsburgh, under the provisions of an Act of Assembly, entitled "An Act to enable cities that are
85 now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," approved the 7th day of February, 1906.

BY THE COURT.

86 No. 71, December Sess., 1905. Miscellaneous Docket. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the said City of Pittsburgh. Decree. Filed June 16/06. W. B. Rodgers, J. Rodgers McCreery, Attorneys at Law, Pittsburg, Pa.

87 In the Court of Quarter Sessions of the Peace of Allegheny County, Pa.

No. 71, December Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Exceptions to Decree.

And now, to wit, June 16th, 1906, appears Messrs. Stone & Stone, Harvey Henderson, Esq., W. C. Gill, Esq., Attorneys for Christ S. Knauer, D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckelman, exceptants who present the following exceptions to the decree for the annexation of the City of Allegheny to the City of Pittsburgh at the above number and term.

First. The said decree is unjust, illegal and not in conformity with the provisions of the Act of Assembly cited in said decree.

Second. Said exceptants herein renew all of their exceptions
88 to the original petition in this case, raised in the exceptions and answer filed in this proceeding on the 7th day of March, 1906.

Third. The decree and the Act of Assembly under which it is drawn and referred to in said decree, are contrary to the provisions

of the Constitution and the laws of the State of Pennsylvania, and to the Constitution and the laws of the United States, as more particularly set out in the exceptions and answer filed in this proceeding on the 7th day of March, 1906.

STONE & STONE,
HARVEY HENDERSON,
W. C. GILL,
Attorneys for Exceptants.

And now, to wit, June 16, 1906, the foregoing exceptions presented in open Court and upon consideration thereof the same are dismissed.

BY THE COURT.

89 No. 71, Dec. Sessions, 1905. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the City of Pittsburgh. Exceptions to Decree. And now, 16 June, 1906, within exceptions ordered to be filed. By the Court. Filed June 16/06. Stone & Stone, Henderson, Gill.

90 *Docket Entries in the Superior Court.*

No. 37, April Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckelman, Exceptants.

Appeal from Quarter Sessions Allegheny County, at No. 71 of December Sessions, 1905.

Appeal and affidavit filed and Writ exit June 16, 1906.

June 22, 1906, Petition to advance for hearing at Philadelphia filed.

June 30, 1906, Petition granted, case to be set down for hearing at Philadelphia at head of list for first week of October.

July 12, 1906, Transferred for hearing at Philadelphia as per Rule VIII.

Sept. 28, 1906, Petition of City of Allegheny for leave to intervene and become one of the appellants filed and sent to E. D.

Oct. 8, 1906, Argued.

91 Nov. 19, 1906, Judgment affirmed, Orlady, J.; Henderson and Morrison, JJ., dissent.

Nov. 20, 1906, Petition for allowance of appeal filed in Supreme Court.

Nov. 21, 1906, Appeal allowed, Mitchell, C. J.

Nov. 23, 1906, Appeal from judgment of Superior Court filed in the Supreme Court at No. 22 October Term, 1907.

Eo Die. Certiorari exit.

92 COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, George Pearson, Prothonotary of the Superior Court of Pennsylvania, sitting at Pittsburgh, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct copy of the whole and entire docket entries in the case in the Matter of the Petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny, to and with the said City of Pittsburgh, of Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckelman, Exceptants, at No. 37 of April Term 1906, as full, entire and complete as the same remains on file in the said Superior Court, in the case stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Protonotary of said Court, and that the foregoing is a correct transcript from said record and of the whole of the original thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at Pittsburgh, in the County of Alle-
93 gheny, this — day of March, in the year of our Lord one thousand nine hundred and seven.

—— ——,
Prothonotary.

94 In the Court of Quarter Sessions of Allegheny County.

No. 71, Dec. Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

Opinion.

MCCLUNG, *J.:*

Under an ordinance of the councils of the city of Pittsburgh approved February 7, 1906, a petition was presented to this court on February 17, 1906, praying that the two cities of Pittsburg and Allegheny be united and become one city, under the provisions of the Act of February 7, 1906 P. L. 7 (The Legislature having been convened in extraordinary session). An order of court made upon the presentation fixed March 8, 1906, for a hearing and directed the giving of proper notice.

Certain citizens and taxpayers of the City of Allegheny on March 7, 1906, filed exceptions to further proceedings in the matter of the uniting of said cities. These exceptions, or certain of them,
95 were afterwards argued at length by counsel and the questions thus raised are now to be disposed of.

The only exceptions argued before us are those raising the constitutionality of the Act of February 7, 1906, upon the grounds:

1st. That the legislation is not within the Proclamation of the Governor convening the assembly in extraordinary session;

2nd. That said act is local or special legislation in conflict with Article 3, Section 7, subdivision 11 of the constitution of the state.

The exceptants have the right to raise these questions. If they maintain their position, the Act of Assembly falls and no further proceedings should be taken.

The Constitution of Pennsylvania provides that the Governor "May on extraordinary occasions convene the general assembly," and (Article 3, Section 25) "when the General Assembly shall be convened in special session there shall be no legislation upon subjects other than those designated in the Proclamation of the Governor calling such session."

96 November 11, 1905, Governor Pennypacker by proclamation convened the General Assembly to meet on January 15, 1906 and designated as a subject of legislation *inter alia* the following, viz: "To enable contiguous cities in the same counties to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate city governments."

Upon January 9, 1906, the Governor issued another Proclamation in which, after referring to the call for an extraordinary session under the former Proclamation, he proceeds "Now, therefore, I, Samuel W. Pennypacker, Governor of the Commonwealth, do hereby designate the following additional subjects for the consideration of the General Assembly with a view to legislation at the said session with respect to them.

* * * * * * *

4th. To enable cities that are now or may hereafter be contiguous or in close proximity, including any intervening land, to be united in one municipality, in order "That the people may avoid the unnecessary burdens of maintaining separate municipal governments.

97 This fourth subject is a modification of the first subject in the original call, and is added in order that legislation may be enacted under either of them, as may be deemed wise."

The legislature met on January 15, 1906, and on February 7, 1906, passed the Act now under consideration entitled, "An Act to enable cities that now are or may hereafter be contiguous or in close proximity to be united with any intervening land, other than boroughs, in one municipality" etc.

The act so far as we now have to deal with it, simply carries out the purpose designated in the title.

As to the exception based upon the alleged failure of the Act to come within the scope of the Governor's call, it seems to us that when we have called attention to the hesitancy with which the courts undertake to revise the acts of co-ordinate branches of the government, especially as to the mere forms to be followed, in the performance of duties by the executive and legislative departments,—To the fact that it is required that the Governor's call shall designate *not the legislation* but the *subject* of legislation of the special session,—

98 And to the fact that there is no constitutional provision specifying the form in which the Governor shall couch his designation of subjects of legislation, or as in the case of titles to Acts, making such designations indices to the Acts to be passed or

in any way a part thereof, we have said or suggested all that need be presented on the subject.

Conceding that the courts would hold void legislation passed at an extraordinary session, the subject of which had in no way been mentioned in the Governor's call, it does not follow that they will impose upon him their ideas as to the best *form* in which to put his designation of subjects. If there is a designation which the people understand and the legislature understands, and which the Legislature and Governor approve as correct, it would seem safe and proper in a matter calling for as broad treatment as the forms preceding legislation to be observed by the Governor and the legislature, for the courts to decline to interfere. Kilgore *v.* Magee, 85 Pa., St., 401. Perkins *v.* Philadelphia, 156 Pa. St. 554.

Is there, however, anything for us to take hold of even if
99 it is for us to review this matter? Is not the original proclamation sufficient? It certainly designates the subject of legislation with which we are dealing, and even if we concede that it suggests legislation in form not allowable the constitutional inhibition is directed not to the Governor issuing his proclamation, but to the legislature passing the Act. It is for the Governor in his proclamation to suggest the *subject* of legislation and for the legislature when in session and the Governor when the bill comes to him for approval to see that the legislation upon the suggested *subject* is in proper form.

Should the Governor call a special session to legislate with respect to some matter affecting *"Philadelphia,"* we take it that the subject would be sufficiently designated although the legislature would be compelled to use "cities of the first class" instead of "Philadelphia" when it came to frame and pass the Act.

But waiving all these things,—The Governor issued a second proclamation in which it is admitted that he designated our subject of legislation in an unexceptionable manner. Exceptants' counsel admit too, that if he had in addition by this proclamation formally again called the legislature to meet at the same time and
100 place, then so far as this exception is concerned they would have no standing.

In the supplemental proclamation the Governor refers to the original and adopts its call, failing to do nothing even in the view of exceptants, except an utterly useless act—the formal repetition of the call for January 15, 1906.

We cannot in looking at so broad a subject take a view narrow enough to sustain exceptants' contention.

Is the act local or special legislation? As we have seen it provides a method for the consolidation of "cities that now are or may hereafter be contiguous or in close proximity with any intervening land than boroughs."

Pittsburgh and Allegheny are the only cities in the State that are now contiguous. Exceptants say that there are other cities in close proximity to each other but that boroughs lie between and they vigorously argue that the act is made special by this exclusion of boroughs. This question we think does not arise in the case before

us, because in our judgment there are no cities in the state not contiguous but in close proximity. Pittsburg is five miles from McKeesport and Philadelphia is practically the same distance
101 from Chester boroughs intervening in both cases. It is not even suggested that the act could apply to any other cities. In our judgment these cities cannot be said to be in close proximity and could no more be united under the act without the words "other than boroughs" than can they with them. Wilkinsburg, a borough of such size that it may at any time become a city, is the same distance from Allegheny that McKeesport is from Pittsburg, and yet Pittsburg lies right between Allegheny and Wilkinsburg. When cities are five miles apart they are not for the purposes of an act such as the one we have before us, in close proximity and they are not in Pennsylvania any two cities not contiguous but in close proximity. We can then deal with the act as if it had applied broadly to cities contiguous or in close proximity or in fact for the purposes of the present case and if it applied simply to contiguous cities. Does the fact that at the present time only Pittsburgh and Allegheny are in position to act under it render it unconstitutional? Pittsburg now has two contiguous boroughs each of such population that it may at any time become a city. In addition to this there are at least two other cases where by the consolidation of two or three boroughs and the obtaining of charters she would have other contiguous cities. The incorporation of these boroughs as cities
102 is not a mere remote possibility; in our judgment it is likely to happen as to some of them at least, long before Philadelphia has a companion as a city of the first class.

Under the circumstances, even if Allegheny did not exist, would it not be proper for the legislature if it undertook to legislate upon the subject of consolidation to pass such a bill as the present one in anticipation of the fact that some of these boroughs might shortly become cities? If so, the fact that there now exists a case to which the act may apply, certainly cannot make it unconstitutional.

If anything had been made plain by the Supreme Court of Pennsylvania it is that *ex necessitate* there must be some legislation permissible which applies to some but not to all of her cities. We do not understand that there is any magic in the process of classification or rather in the use of the term "class" which makes that general which was before special that is, this legislation would not be helped by dividing for the purposes of consolidation the cities into classes contiguous and non-contiguous, and then legislating for one of the classes. The Act before us does this very thing in substance and essence. The simple question then is has the constitu-
103 tion so tied the hands of the legislature that it cannot provide for the consolidation of cities that ought to be consolidated because they lie together, without at the same time providing for the consolidation of those that ought not to be consolidated, because they are far separated from each other. Ever since the constitution went into effect it has been conceded that there is such a distinction between Philadelphia and the other cities of the Commonwealth as

to its governmental wants, that through classification she can be legislated for alone. Is there not for the purposes of consolidation a much greater distinction between the case of Pittsburg and Allegheny and that of Pittsburg and Philadelphia based on contiguity and the want of it, than there is for the purpose of city government, between Philadelphia and Pittsburg based on difference in population?

In the case dealing with this portion of the constitution it is especially easy to find dicta which *seem* to conflict with our conclusion when they are not read in the light of the case to which they apply or in the light of the other cases relating to the same Article.

We consider ourselves however, in entire accord with the
104 cases on the subject taken as a whole and are clear that it was entirely competent for the legislature to pass the act under consideration.

Something was said upon the argument on the subject of some former additions to Pittsburg under an Act the constitutionality of which is attacked.

We do not think it competent for the exceptants to raise that question here.

We are of opinion that the exceptions filed should be dismissed, and that the petition and proceedings are regular and in conformity with the Act of Assembly and that the election should be ordered.

105 No. 71 Dec. Sessions 1905. In the matter of the petition of the City of Pittsburg for uniting annexing and consolidating the City of Allegheny to and with the said City of Pittsburgh. Opinion. McClung, J. Filed April 25/06.

106 The Superior Court of Pennsylvania, County of Allegheny, *ss.*

The Commonwealth of Pennsylvania, to the Judges of the Court of Quarter Sessions for the County of Allegheny. Greeting:

We being willing for certain causes, to be certified of the matter of the Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckleman from the decree of your said Court at No. 71 of December Sessions A. D. 1905,

Wherein, Matter of the petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the said City of Pittsburgh, the said Appellants being exceptants to said decree before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the Judges of our Superior Court of Pennsylvania, at a Superior Court to be holden at Pittsburgh, the second Monday of April next, to wit, April 8th, A. D. 1907 so full and entire as in your Court before you they remain, you certify
107 and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable Charles E. Rice, Doctor of Laws, President Judge of our said Superior Court at Pittsburgh, the sixteenth day of June, in the year of our Lord one thousand nine hundred and six.

[Seal of the Superior Court of Pennsylvania.]

GEO. PEARSON,
Prothonotary.

108 To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania, sitting at Pittsburgh:—

The record and process, and all things touching the same, so full and entire as before as they remain, we certify and send, as within we are commanded.

S. A. McCLUNG, *Judge.* [L. S.]

No. 37 of April Term, 1907. Superior Court. *In Re* Petition of City of Pittsburgh &c. Appeal of D. Hunter, Jr., *et al* Exceptants. Certiorari to the Court of Quarter Sessions for the County of Allegheny Returnable the second Monday of April, A. D. 1907. Rule of the Appellee, to appear and plead on the Return Day of the Writ. Geo. Pearson, Prothonotary. Note: No application for the allowance of special supersedeas will be considered unless Rule 37 of the Superior Court is strictly complied with. Filed Oct. 1, 1906 In the Superior Court. Stone & Stone Harvey Henderson W. C. Gill, Attorneys for Appellant Filed June 16/06.

109 In the Superior Court of Pennsylvania, Western District.

No. 37, April Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckleman, from the Decree of the Court of Quarter Sessions for Allegheny County, at No. 71, December Sessions, 1905, Miscellaneous.

Specifications of Error.

First. The Court erred in dismissing the exception filed by the appellants herein, which exception is as follows:

"The Act of Assembly under which this petition is filed
110 is local or special legislation, in conflict with Article 111, Section 7, sub-division 2, of the Constitution of the State of Pennsylvania, and is unconstitutional."

Second. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:

"The proclamation of the Governor of Pennsylvania, convening

the General Assembly in special session, does not designate the subjects of legislation embraced and contained in the Act of Assembly under which this petition is filed, and the said Act is therefore in violation of Article 111, Section 25, of the Constitution of the State of Pennsylvania, and is unconstitutional."

Third. The Court erred in dismissing the exception filed by the appellants herein, which exception is as follows:

"If the paper, or letter, promulgated by the Governor of the State of Pennsylvania, on the Ninth day of January, 1906, shall be held to be a call or authority for legislation thereunder, the said paper or letter does not designate the subjects of legislation embraced and contained within the Act of Assembly under which this petition is filed, which Act therefore is in violation of Article 111, Section 25, of the Constitution of the State of Pennsylvania, and is unconstitutional."

111 Fourth. The Court erred in dismissing the exception filed by the appellants herein, which exception is as follows:

"The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to over-power or out-number those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

Fifth. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:

"The Act of Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pittsburgh is in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged City government, by legislation, is in violation of Article 1, Section 9, Paragraph 10 of the Constitution of the

112 United States, and therefore is unconstitutional."

Sixth. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:—

"The Act of General Assembly under which this petition is filed is in conflict with Article V of the Amendments to the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the value of the property, in violation of said Article V. of the Amendments to the Constitution of the

United States, and they, therefore, will be deprived of their property."

Seventh. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:

"The Act of Assembly under which this petition is filed is in conflict with Article XIV. of the Amendments to the Constitution of the United States, because the said annexation of the City of
113 Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of your respondents."

Eighth. The Court erred in entering a decree that the City of Allegheny, the lesser city, be annexed and consolidated with the City of Pittsburgh, the greater or larger city, under the provisions of said Act of Assembly.

STONE & STONE,
HARVEY HENDERSON,
WM. C. GILL,
Attorneys for Appellants.

114 Superior Court of Penna. No. 37 April Term, 1907. In the matter of the Petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the City of Pittsburgh. Appeal of D. Hunter, Jr., *et al.*, from the Decree of the Quarter Sessions Court, at No. 71 Dec. Sess., 1905. Specifications of error. Filed Oct. 1, 1906. In the Superior Court. Stone & Stone Attorneys at Law Bakewell Building Pittsburgh, Pa. 1251 Frick Building Annex.

115 In the Court of Quarter Sessions of Allegheny County.

No. 71, December Sessions, 1905.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckleman, Exceptants.

Order Granting Supersedeas.

And now, June 16th, 1906, it is ordered that the appeal taken in the above entitled case operate as a supersedeas upon the exceptants giving bail with sufficient surety or sureties in the sum of One thousand dollars.

BY THE COURT.

116 No. 71 Dec. Sessions 1905. In the matter of the petition of the City of Pittsburg for annexing uniting and consolidating the City of Allegheny with the City of Pittsburg. Order allowing supersedeas. Filed June 16/06. Stone & Stone Harvey Henderson Wm. C. Gill Counsel for Exceptants.

117 In the Superior Court of Pennsylvania.

No. 37, April Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal by D. Hunter, Jr., Robert Cochrane, John A. Sauer, and Herman W. Heckleman, from the Decree of the Court of Quarter Sessions of Allegheny County, at No. 71, December Sessions, 1905.

Filed Nov. 19, 1906.

ORLADY, *J.*:

On November 11, 1905, the governor of the Commonwealth, by virtue of the authority vested in him by article 4, section 12, of the constitution, issued a proclamation convening the general assembly in extraordinary session to meet on January 15, 1906, to consider legislation upon seven designated subjects, the first being, "to enable contiguous cities in the same counties to be united in one municipality in order that the people may avoid the unnecessary
118 burdens of maintaining separate city governments." On January 9, 1906, by a proclamation reciting that "an extraordinary session of the general assembly of the commonwealth of Pennsylvania had been called," as above stated, the governor designated four "additional subjects for the consideration of the general assembly with a view to legislation at the said session with respect to them": the fourth being "to enable cities that are now, or may hereafter be contiguous or in close proximity, including any intervening land, to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate municipal governments. This fourth subject is a modification of the first subject in the original call, and is added in order that the legislation may be enacted under either of them as may be deemed wise." Pursuant to these proclamations the general assembly convened in extraordinary session, and enacted among others, the statute which gives rise to this controversy. It is entitled "an act to enable cities that are now, or may hereafter be, contiguous or in close proximity to be united, with any intervening land other than boroughs, in one municipality; providing for the consequence of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each;" and was approved by the governor on February 7, 1906. The councils of the city of Pittsburgh directed the mayor of that city to
119 file a petition in the court of quarter sessions of Allegheny County praying "that the cities of Pittsburgh and Allegheny shall be united and become one city," as provided by the said act. When the petition was presented an order was made fixing March 8th, for the hearing of the petition, after notice had been given to

the Mayor of Pittsburgh and the Mayor of Allegheny, the clerk of the councils of each of the said cities, and publication in three named newspapers in the county. The present appellants, who are resident citizens, and owners of property in the city of Allegheny, filed exceptions to the petition, and an answer thereto, and after due hearing the court filed a decree in which the exceptions were dismissed, the proceedings held to be regular, and in conformity with the act of assembly; and directed, that an election should be held, to enable the lawful voters to vote for or against the consolidation of the two cities. This election resulted in a majority of 20,154 out of a total vote of 37,864 in the two cities in favor of consolidation, and on June 16th, the court "ordered, adjudged and decreed that the city of Allegheny, the lesser city, be annexed and consolidated with the city of Pittsburgh, the greater or larger city, so that they form but one city in the name of the city of Pittsburgh;" from which decree this appeal was taken.

120 It is earnestly contended by the appellants that the whole proceeding must fall; because first, the act in controversy is not within the terms of the proclamation of the governor convening the general assembly; second, it is local or special legislation, in conflict with the constitutional prohibitions; third, it is unfair, unjust and unequal in that it permits the electors of the larger city by their votes to annex the lesser city without the consent, and against the protest of a majority of the electors of the lesser city, and hence it is not by "due process of law" as guaranteed by the federal constitution.

The constitution of our commonwealth declares that "the supreme executive power shall be vested in the governor who shall take care that the law be faithfully executed," (art. 4 sec. 2) "he shall from time to time give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he judge expedient," (sec. 11); that, "he may on extraordinary occasions, convene the general assembly (sec. 12). By article 3, section 25, it is provided, "when the general assembly shall be convened in special session there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session."

121 It must be conceded that the determination, whether an occasion exists for an extraordintry session is a matter entirely for the executive: "Cooley's Constitutional Limitations 187 6th Ed. The form in which the general assembly is to be convened, the requisites of the proclamation, and the measure of the notice to be given to the members of that body are not prescribed by the constitution, hence no challenge lies to either the necessity for such a meeting, or the correctness of the precedent notice. Had the governor chosen to issue as many proclamations to consider legislation as there were subjects embraced in the two he did issue, it would be at most a matter of form and not of substance. He is not restricted in regard to this, and the fact that he did issue one did not exhaust his authority. While it is mandatory upon the executive to designate the subjects to be considered by the general assembly,

it is outside our duty to go beyond the words of the law to inquire whether all of the other precedent formalities have in fact been complied with. The law before us is certified by both houses and approved by the governor, with adequate proclamations convening the legislature which are equal to the constitutional requirement, and whether the first subject-item in the original is sufficiently comprehensive to warrant the enactment of the statute now under consideration is not material inasmuch as the fourth subject-item of the second or amendatory proclamation is unquestionably so.

122 Moreover, the designation of the subject so far as this case is concerned, is in no wise ambiguous; and that it was clearly understood by the legislature and that this enactment was responsive to the call of the governor, is clearly shown by the title to the act itself, as above quoted.

It is urged that this act is in conflict with the constitutional prohibition contained in the seventh section of article 3, to wit: "The general assembly shall not pass any local or special law, regulating the affairs of counties, cities, townships, wards, boroughs, or school districts." This section has been a fruitful source of litigation, and the decisions of the courts are not in entire harmony in regard to its application to the many acts of assembly which have been submitted for review. As stated in Perkins *v.* Philadelphia, 156 Pa. 545: "It is almost wholly prohibitory; it enjoins very few duties, but the 'thou shalt not's' number more than sixty;" and, as stated by Judge Mitchell in his dissenting opinion thereto, "It is a barbed wire fence around all legislative action, bristling with points of danger even to the most honest, and desirable, and essential laws. A literal adherence to all its provisions would have stopped the wheels of government, and so this court was forced to hold when the first great question of the needs of municipal legislation

123 came before it. Some elasticity was absolutely indispensable, and it was found in the principle of classification. I make these observations and this illustration to call special attention to the necessity for reading the constitution, where it relates to the powers of the legislative branch of the government, in a broad and liberal way, looking to its spirit as more controlling than its mere words. If the statute does not offend against the spirit does not really do the thing which the constitution means to prohibit, then it should be sustained, although its form may be liable to objection under the strict words of the prohibition. It must be conceded in the light of our many authorities that the legislature may classify cities according to population and to legislate upon some subjects at least for each class separately:" In Clark's Estate, 195 Pa. 520 the Supreme Court reiterate the same thought—viz.: the constitutional restrictions had to a great extent to be expressed in general terms, and the inadequacy of language to express the purpose with entire precision, as well as the determination of the framers of the instrument to make the prohibition effective at all hazards, led to its embodiment in terms that are liable to cover with the letter, cases that are not within the spirit and real intent. Constitutions are not to receive a narrow or technical or too literal construc-

tion; they get their authority from the adoption of the peo-
124 ple, and they are to be read in a broad, and as far as possible, an untechnical way to carry out their real purpose.

The creation of municipal corporations has been said to be an attribute of that sovereignty which regulates the affairs of the people and their government, the essential requisites being territory and population. The review of the underlying principles and authorities sustaining them is concisely and clearly stated by the present Chief Justice of the Supreme Court in Commonwealth *v.* Moir, 199 Pa. 534: "Municipal corporations are agents of the state, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined by the legislature, and subject to change, repeal or total abolition at its will. They have no vested rights in their offices, their charters their corporate powers or even their corporate existence. This is the universal rule of constitutional law, and in no state has it been more clearly expressed, and more uniformity applied than in Pennsylvania. * * * The fact that the action of the state toward its municipal agents may be unwise, unjust, oppressive, or violative of the natural or political rights of their citizens, is not one that can be made the basis of action by the judiciary. * * * This court is not authorized to sit as a council of revision to set aside or refuse assent to ill-considered un-
125 wise or dangerous legislation. Our only duty and our only power is to scrutinize the act with reference to its constitutionality, to discover what if any provisions of the constitution it violates." Nor are the courts at liberty to declare an act void, because in their opinion it is opposed to a spirit supposed to pervade the constitution, but not expressed in words. When the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature, we cannot declare a limitation under the notion of having discovered something in the spirit of the constitution which is not even mentioned in the instrument: Cooley's Constitutional Limitation, chapter 7, sec. 6. A constitution is not to receive a technical construction like a common law instrument or statute. It is to be interpreted so as to carry out the great principles of the government, not to defeat them. Commonwealth *v.* Zephon, 8 W. & S. 286: and it matters not how arbitrary the enactment may appear to those who feel dissatisfied with or injured by it: Commonwealth *v.* Vrooman, 164 Pa. 306. "The restrictions of the constitution upon legislation apply to direct legislation, not to the incidental operation of statutes constitutional in themselves upon other subjects than those with which they directly deal:" Sugar Notch Borough, 192 Pa. 349.

It was said in Wheeler *v.* Philadelphia, 72 Pa. 344, which
126 was decided the year following the adoption of the constitution: "Legislation is intended not only to meet the wants of the present, but to provide for the future. It deals not with the past, but, in theory at least, anticipates the need of a state, healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburgh will probably become a city of the first

class; and Scranton, or others of the rapidly growing interior towns will take the place of the city of Pittsburgh, as a city of the second class. In the meantime, is the classification as to the cities of the first class bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon numbers." The rule is stated in Lloyd *v.* Smith, 176 Pa. 213, that "a law which does not exclude any one from a class, and applies to all the members of the class equally, is general," and the converse is also true that a law which does permanently exclude any one from the class must be special. The fact that the law applies to only one county now would not be a sufficient objection if in the natural progress of events under existing laws, others may grow into the class hereafter. But the way must be clear for them to do so: Blakenburg *v.* Black, 200 Pa. 638. If by any reasonable construction of the language the act is constitutional, such must be adopted. A construction which compels the court to declare an act unconstitutional must be
127 plain, and positive, and peremptory: Sharpless *v.* The Mayor 21 Pa. 147; clearly, palpably, plainly and in such manner as to preclude doubt or hesitation: Spear *v.* Blairsville, 50 Pa. 150.

In Weiman *v.* Railway Co., 118 Pa. 192, the court says: "For purposes of local government the state is subdivided into counties, townships, and other municipal and quasi-municipal corporations. Each class of these sub-divisions has purposes to subserve that are peculiar to it, and needs to be invested with the powers necessary to that end. Generally speaking, all the members of each class have the same local functions to perform. Classification therefore upon this basis has been recognized, and a statute relating to all the townships, all the school districts, or all the members of any particular divisions of the state, has been held constitutional. It has been found desirable to divide cities into classes upon the basis of their population. The needs of a great city with half a million or more of people are somewhat different in many respects from the needs of a city with ten thousand. The organization of their local governments, and the management of their municipal affairs will be quite unlike. Each of these classes requires legislation peculiar to itself; but such legislation must be applicable to all the members of
128 the class to which it relates, and must be directed to the existence and regulation of municipal powers and to matters of local government."

The underlying principle of all the cases is that classification, with the view of legislating for every class separately, is essentially unconstitutional unless a necessity therefor exists,—a necessity springing from manifest peculiarities, clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class, separately, that would be useless and detrimental to the others. Laws enacted in pursuance of such classification and for such purposes, are, properly speaking, neither local nor special. They are general laws, because they apply alike to all that are similarly situated as to their peculiar necessities. All legislation is necessarily based on a classification of its subjects, and

when such classification is fairly made, laws enacted in conformity thereto cannot be properly characterized as either local or special. Ayar's Appeal, 122 Pa. 266. The necessity spoken of by the court in Wheeler *v.* Philadelphia, 77 Pa. 338, was the necessity of escape from the intolerable inconveniences of uniformity of regulations under circumstances and needs essentially different. And in general with reference to public matters and legislative usage, necessity means great, or urgent public convenience. Thus viewers under the act of June 13, 1836, are required to examine and report-
129 "whether the road desired be necessary for a public or private road," etc. It cannot be contended that anything more is meant than public convenience: Commonwealth *v.* Gilligan, 195 Pa. 504.

The act under review presents a phase of the legislative authority that differs in many respects from the decided cases, and the exigencies which justified and made necessary "classification of the state's agencies" are now presented with equal merit to warrant the consolidation of cities. Both of the cities affected by this proceeding are of the second class, and the consolidated city remains in that class, so that the relation of the municipality to the state is not in any way changed. The mutation will be, that the two cities will be united in one, and under the same legislative and executive officers, so that all the departments having charge of the health and education of the people, the protection of their lives and property will be administered under a uniform and comprehensive system, assuring better results with a more homogeneous government. Many acts of the legislature have provided for the creation of counties and boroughs and townships, and when, by reason of new and unexpected conditions, it was deemed expedient by the legislature to redefine the subdivisions of the state as the necessity therefor arose, to change their boundary lines; to annex adjoining and adjacent corpora-
130 tions of like character; to permit a borough or township to be annexed to an adjoining city; to divide a county and erect a new one therefrom. In the judgment of the legislature the time has now arrived when, to the powers already given to the local municipalities, there should be added the authority, to enable cities that are now or may hereafter be contiguous or in close proximity to be united into one municipality. We must go outside of the words of the statute to give it a local or special application. The terms imposed by the bill—contiguous or in close proximity—not only apply to reason, but they are founded on the common sense of mankind, as it could h-rdly be possible that cities not contiguous or in close proximity to each other could ever be united. Intervening municipalities, or large areas of land would be an absolute bar to a uniform and coherent administration of municipal law. Under this act all cities that are contiguous may consolidate. There is no qualifying language of any kind excluding from the class, any contiguous cities. There is nothing in the act to localize it by geographical description, and it applies to all cities in the commonwealth. It embraces all cities which are or may come into like situation and circumstances. The qualifications named are not artificial like the act which was

held unconstitutional in Sample *v.* Pittsburgh, 212 Pa. 533,
131 which provided, "for purposes of this act cities separated by a stream, river or highway shall be included under the term contiguous." Even if we have recourse to statistical and geographical facts of which the courts take judicial notice, we find that under the last census of 1900 there is but one city of the first class, three of the second class, and twenty-one of the required population necessary for the third class. In addition to these there are eighteen boroughs, each having a population of over 10,000, and a number of others which, if the same proportion of increase in population is upheld during the present as the last decade, will have the required population to entitle them to a city government, and they are so located as to be reasonably within the terms of the present act. Many instances could be noted, showing the rapidly increasing centers of population which in but a few years will be in a position to accept the provisions of the act. They will not necessarily do so, but in the natural progress of events it is to be expected that some of them will. This act affords the opportunity to such cities to centralize the administration of the law "in order that the people may avoid the unnecessary burdens of maintaining separate city governments" as suggested in the proclamation of the governor. The appellants with great frankness say that "the question whether Pittsburgh
132 and Allegheny ought to be consolidated or not is a legislative question, and not a judicial one. The courts will consider only the law of the case, wholly unaffected by either the desire for consolidation in Pittsburgh, or the opposition to it in Allegheny. The question of expansion, zeal, enterprise and pride in having a large city in the western part of the state, are outside the plan of consideration of the courts." It must be accepted as definitely settled, that a municipal corporation is a creature of the state; it derives its powers from the state; the power that makes can unmake, change or modify. The public good must always be the controlling question, and to effectuate this the whole law-making power is committed to the legislature. Its command must prevail unless it clearly transgresses the constitutional declaration: Water Company *v.* Downingtown Borough 175 Pa. 341; Lloyd *v.* Smith, 176 Pa. 213; Sugar Notch Borough 192 Pa. 349; Commonwealth *v.* Gilligan, 195 Pa. 504. The cities of the commonwealth are divided into three classes by the Act of June 25, 1895, P. L. 275. The organization of the cities of the third class is provided for by the Act of May 23, 1889, P. L. 277, to wit: "Whenever a majority of the electors of any town, or borough, or of any two or more contiguous towns or boroughs, situate within the limits of the same county, and having together a population of at least 10,000 according to the last preced-
133 ing census, shall vote at any general election in favor of the same," after the corporate authorities of such towns or boroughs shall direct an election to be held upon the question of becoming a city.

It may be that at the time of this enactment the cities of Pittsburg and Allegheny were the only ones in the state to which the legislation would technically apply. This fact alone does not make the

act unconstitutional. The extraordinary development of the natural resources of this commonwealth, and the increasing number of its industrial manufactories have developed centers of population which within the past half century have changed from mere hamlets to thriving boroughs and cities. This legislation applies to the coming years as well as to the present; while it provides for a present condition as to these two cities, it anticipates what will be the apparent necessities within a few years, of a number of cities of the third class which will come within the limitations of this act,—contiguous or in close proximity to another city.

The prescribed conditions mentioned in the act are fairly met by the facts developed on the hearing of this case. It is undisputed that Pittsburgh and Allegheny are contiguous cities of the same class. It is also apparent that the judgment of the legislature
134 in permitting such consolidation is approved by a very large majority of the voters within the consolidated territory, and while popular approval of an act has nothing to do with its constitutionality, it is significant of the demand for just such legislation if it can be legally effected. The first legislature after the adoption of the constitution, authorized the incorporation of a city whenever a majority of the electors of any town or borough, or any two or more contiguous towns or boroughs having a population of at least 10,000, shall vote at any town election in favor of the same (Act of May 23, 1874, P. L. 235), and after this lapse of time, the legislative declaration that it was right and necessary to permit two contiguous cities to unite upon practically the same terms marks a consistent evolution of our laws, commensurate with the material growth of our state and increase in our population.

Legislation for a class, distinguished from a general subject, is not special but general, and classification is a legislative question, subject to judicial revision only so far as to see that it is founded on real distinctions in the subjects classified, and not on artificial or irrelevant ones used for the purpose of evading the constitutional prohibition. If the distinctions are genuine, the courts cannot declare the classification void, though they may not consider it to be on a sound basis. The test is not wisdom, but good faith in the
135 classification: Seabolt *v.* Commissioners, 187 Pa. 318; Stegmaier *v.* Jones 203 Pa. 47.

In Sample *v.* Pittsburgh, 212 Pa. 533, the decision turned upon the question whether the act was local or special legislation in contemplation of the constitutional provision prohibiting such legislation. As stated in that case the act "not only affects the people of the two cities, but concerns the two cities in their governmental and corporate capacities. It enlarges the territory and population of the one, and deprives the other of its charter and government of a city. It is apparent, we think, that the act is 'a law regulating the affairs of' the cities in question." All that is conceded to be within the power of the legislature, if the legislation is not within the prohibition—that is a local or special law. The Act of April 20, 1905, P. L. 221, was held to be unconstitutional, in that case, and the act

now under consideration, was evidently passed to meet the objections set by the Supreme Court. It comes to us with the approval of our state legislature and the governor, as representing the last and best thought on this important subject. This statute is free from the objections which were successfully urged against the one of 1905, and in regulating the affairs of cities it is not local nor special, but applies to, and permits all "cities which are now, or may hereafter be, contiguous or in close proximity, with any in-
136 tervening land other than boroughs, to be united in one municipality," as stated in its title. The conditions imposed are not in violation of any constitutional provision.

In determining whether this act is contrary to that "due process of law" guaranteed by the federal constitution, in providing that the electors of the consolidated territory shall determine the question of annexation of the lesser city instead of permitting the majority of the electors of the lesser city to decide it, we have many adjudicated cases which warrant the action taken by the legislature. The words "due process of law," as taken from Magna Charta and incorporated in the constitution, "were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." In each particular case the words mean "such an exercise of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe, for the class of cases to which the one in question belongs: Cooley's Constitutional Limitations, 434. The people of the municipalities do not define for themselves their own rights, privileges and powers, nor is there any common law which draws a definite line of distinction between the powers
137 which may be exercised by the state and those which must be left to the local governments: 2 Kent's Comment's, 278, 279. The general principle is that where the state is acting in its sovereign capacity, it acts for the whole commonwealth, and private rights and interests must yield to the paramount object. Private rights may be and very frequently are interfered with by the legislative, executive or judicial departments of the government, and the creation of municipal corporations, and the conferring upon them of certain powers and subjecting them to corresponding duties, does not deprive the legislature of the state of the general control over their citizens which they before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, and overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion, and substitute those which are different: Cooley's Constitutional Limitations, 228. Restraints on the legislative power of control must be found in the constitution of the state, or they must rest alone in the legislative discretion. If the legislative action operates injuriously to the municipalities or to individuals the remedy is not with the courts. The courts have no power to
138 interfere, and the people must be looked to to right through the ballot box all these wrongs: Ervine's Apeal, 16 Pa. 256.

Cooley's Constitutional Limitations 228, 229, 230. The Act in question has been passed with all the forms and ceremonies requisite to make it a valid statute. The legislature was properly convened, and kept well within its powers in regulating the affairs of cities by a general law in accord with the requirements of the constitution.

It follows, under the law of the land, that neither the municipality as such, or any of the persons residing therein, have any vested rights in the municipal powers, as against the state which created the municipality. It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—subject to legislative control "which may destroy its very existence with the mere breath of arbitrary decision:" Phila. *v.* Fox, 64 Pa. 165. Otherwise there would be numberless petty governments instituted within the state, forming a part of it, but independent of the control of the sovereign power. These local governments are mere auxiliaries to, and in the aggregate they constitute the commonwealth at large which through its legislature may, at will, create, change, reorganize, consolidate or abolish them, and that wholly irrespective of the wishes or
139 consent of those composing the local body politic: 1 Smith Mun. Corp., secs. 97, 407, 408; I Hare's Amer. Con. Law, 628; 20 Amer. & Eng. Ency. of Law, 1218, 1224; 10 Amer. & Eng. Ency. of Law, 290; McGeehee Due Process of Law.

The assignments of error are overruled, and the decree is affirmed.

Judges Henderson and Morrison dissent.

140 COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, set:

I, George Pearson, Prothonotary of the Superior Court of Pennsylvania, sitting at Pittsburgh, the said Court being a court of record, do hereby certify that the foregoing is a true and correct copy of the whole and entire opinion in the case of petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh at No. 37 April Term, 1907, as full, entire and complete as the same remains on file in the said Superior Court, in the case there stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record, and of the whole of the original thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at Pittsburgh, in the County of Allegheny, this 22nd day of March in the year of our Lord one thousand nine hundred and seven.

[In the Superior Court of Pennsylvania.]

(Signed) GEO. PEARSON,
Prothonotary.

141 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURG FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURG.

Petition for the Allowance of an Appeal from the Superior Court.

To the Honorable the Chief Justice and Justices of the Supreme Court of Pennsylvania:

The petition of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckelman, appellants and exceptants in the court below, and the City of Allegheny, appellant and intervener, prays for the allowance of an appeal from the judgment of
142 the Superior Court of Pennsylvania against them, the said D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman and the City of Allegheny appellants, in the matter of the petition of the City of Pittsburg for uniting, annexing, *annexing* and consolidating the City of Allegheny to and with the City of Pittsburg, at No. 37 April Term, 1907, and respectfully represents:

The questions involved are as follows:

Is the law of 1906, authorizing the annexing and consolidating of two cities, special or local legislation?

Is this law designated in the proclamation calling the special session of 1906, or in the paper of January 9, 1906, and do either of them authorize its enactment?

Does this law impair the obligation of contracts, deprive citizens of their property without due process of law, and violate the "law of the land."

Your petitioners are advised and therefore further represent:

That this case involves the construction or application of the constitution of Pennsylvania, and the construction or application of the constitution of the United States, as will more particularly and at large appear in the paper book of appellants.

143 Your petitioners annex hereto a certified copy of the opinion of the Superior Court in said case, and file herewith copies of appellants' paper book, together with a paper book of appellees. Bond was fixed in Quarter Sessions Court, given and approved by that Court and supersedeas ordered.

Your petitioners further pray that your Honorable Court to order that the appeal operate as a supersedeas.

And they will ever pray, etc.

D. HUNTER, JR.
ROBERT K. COCHRANE.
JOHN A. SAUER.
HERMAN W. HECKELMAN.
THE CITY OF ALLEGHENY,
By ELLIOTT RODGERS,
City Solicitor.

STONE & STONE,
HARVEY HENDERSON,
WM. C. GILL,
ELLIOTT RODGERS,
Counsel.

COUNTY OF ALLEGHENY, *ss:*

144 Before me, the undersigned authority personally appeared Robert K. Cochrane, John A. Sauer, and Herman W. Heckelman, for themselves and the other petitioners, who being duly sworn according to law depose and say that the statements contained in the foregoing petition are true and correct, and that the appeal is not taken for the purpose of delay.

ROBERT K. COCHRANE.
JOHN A. SAUER.
HERMAN W. HECKELMAN.

Sworn to and subscribed before me this 19th day of November, 1906.

[SEAL.] JACQUE LA BELLE,
Notary Public.

My appointment dated Sept. 11, 1906.
My Commission Expires end next Session of Senate.

145 Supreme Court of Pennsylvania, Western District. In the matter of the petition of the city of Pittsburg for uniting, annexing and consolidating the city of Allegheny to and with the city of Pittsburg. Petition for allowance of appeal from the Superior Court. Order: And now, Nov. 21st, 1906 the within petition presented and upon consideration thereof an appeal allowed and supersedeas ordered, with leave to either party to move for advancement of the hearing. Mitchell, C. J. Filed Nov. 20, 1906 Supreme Court, W. D. Stone & Stone Harvey Henderson Wm. C. Gill Elliott Rodgers, Counsel.

146 WESTERN DISTRICT OF PENNSYLVANIA,
County of Allegheny, ss:

The Commonwealth of Pennsylvania to the Judges of the Superior Court, Greeting:

Whereas, *In re* Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh. Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckelman, Exceptants, and City of Allegheny, intervener, Allegheny County, to No. 71 December Term, 1905, and thereupon it was so proceeded in that judgment was entered in said Court for the said Petitioner and, Whereas, upon appeal to the Superior Court, the said judgment was affirmed as of No. 37 April Term, 1907, and Whereas, thereupon, to wit, on the 21st day of November 1906, upon due cause shown, an appeal to this Court was allowed.

Now, therefore, We being willing to be certified of the matter of the said appeal, do command you, that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Supreme Court of Pennsylvania, at a Supreme Court to
147 be holden at Pittsburgh, in and for the Western District, the fourth Monday of October, 1907, so full and entire as in your Court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James T. Mitchell, Doctor of Laws, Chief Justice of our said Supreme Court, at Pittsburgh the twenty-third day of November in the year of our Lord one thousand nine hundred and six.

GEO. PEARSON, *Prothonotary.*

148 To the Honorable the Justices of the Supreme Court of the Commonwealth of Pennsylvania, sitting in and for the Western District:

The record and process, and all things, touching the same, so full and entire as before us they remain, we certify and send as within we are commanded.

W. D. PORTER, [L. S.]
Judge of the Superior Court.

No. 22 of October Term, 1907.

No. 37 April Term, 1907, Superior Court. Supreme Court. *In Re* Petition City of Pittsburgh for Uniting &c. Appeal of D. Hunter, Jr. *et al.* Certiorari to the Superior Court. Returnable the fourth Monday of October, A. D. 1907. Rule on the Appellee, to appear and plead on the Return Day of the Writ. Geo. Pearson, Prothonotary. Filed Nov. 23, 1906. Superior Court. Fifth District. Stone & Stone Harvey Henderson Wm. C. Gill, Elliott Rodgers, Attorneys for Appellants.

149 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckelman and the City of Allegheny from the Decree of the Superior Court of Pennsylvania, at No. 37, April Term, 1907.

Assignments of Error.

First. The Superior Court erred in not sustaining the first specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"First. The Court erred in dismissing the exception filed by the appellants herein, which exception is as follows:

150 'The Act of Assembly under which this petition is filed is local or special legislation, in conflict with Article II, Section 7, Sub-Division 2, of the Constitution of the State of Pennsylvania, and is unconstitutional.'"

Second. The Superior Court erred in not sustaining the second specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Second. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:

"The proclamation of the Governor of Pennsylvania convening the General Assembly in special session, does not designate the subjects of legislation embraced and contained in the Act of Assembly under which this petition is filed, and the said Act is therefore in violation of Article III, Section 25, of the Constitution of the State of Pennsylvania, and is unconstitutional.'"

151 Third. The Superior Court erred in not sustaining the third specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Third. The Court erred in dismissing the exception filed by the appellants herein, which exception is as follows:

'If the paper, or letter, promulgated by the Governor of the State of Pennsylvania, on the Ninth day of January, 1906, shall be held to be a call or authority for legislation thereunder, the said paper or letter does not designate the subjects of legislation embraced and contained within the Act of Assembly under which this petition is filed, which Act therefor is in violation of Article III, Section 25, of the Constitution of the State of Pennsylvania, and is unconstitutional.'"

Fourth. The Superior Court erred in not sustaining the fourth specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Fourth. The Court erred in dismissing the exception filed by the appellants herein, which exception is as follows:

152 "The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser City.' "

Fifth. The Superior Court erred in not sustaining the fifth specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Fifth. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:

"The Act of Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pittsburgh, is in conflict with Article I, Section 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents,

153 by which they are to be taxed only for the government of the City of Allegheny, and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of Article I, Section 9, Paragraph 10, of the Constitution of the United States, and therefore is unconstitutional.' "

Sixth. The Superior Court erred in not sustaining the Sixth specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Sixth. The Court erred in dismissing the exception filed by the appellants herein, said exception being as follows:

'The Act of General Assembly under *with* this petition is filed is in conflict with Article V, of the Amendments of the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due pro-

154 cess of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the value of the property, in violation of said Article V of the Amendments of the Constitution of the United States, and they, therefore, will be deprived of their propert[illegible].' "

Seventh. The Superior Court erred in not sustaining the seventh specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Seventh. The Court erred in dismissing the exceptions filed by the appellants herein, said exception being as follows:

'The Act of Assembly under which this petition is filed is in con-

flict with Article XIV of the amendments to the Constitution of the United States, because the said annexation of the City of
155 Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place, will cause a large depreciation in the value of the property of your respondents.'"

Eighth. The Superior Court erred in not sustaining the eighth specification of error to the judgment of the Court of Quarter Sessions of Allegheny County, which is as follows:

"Eighth. The Court erred in entering a decree that the City of Allegheny, the lesser City be annexed and consolidated with the City of Pittsburgh, the greater or larger City, under the provisions of said Act of Assembly."

Ninth. The Superior Court erred in over-ruling all the assignments of error to the action and judgment of the Court of Quarter Sessions of Allegheny County, and in entering judgment and confirming the decree of said Court of Quarter Sessions of Allegheny County.

HARVEY C. HENDERSON,
WM. C. GILL,
ELLIOTT RODGERS,
STONE & STONE.
Of Counsel for Appellants.

December 20th, 1906.

156 Supreme Court of Penna. No. 22 October Term, 1907. In the matter of the petition of the City of Pittsburg for uniting, annexing and consolidating the City of Allegheny to and with the City of Pittsburgh. Assignments of error. Filed Dec. 20, 1906. Supreme Court, W. D. Stone & Stone Attorneys at Law.

157 Docket Entries of the Supreme Court.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckleman, Exceptants, and City of Allegheny, Intervenor.

Appeal from Superior Court at No. 37, April Term, 1907.

Nov. 21 1906, Appeal allowed.
Appeal and affidavit filed and Writ exit Nov. 23, 1906.
Eo Die record filed.
Dec. 20, 1906, Assgts. filed
Dec. 31, 1906, Superior Court Docket entries filed.
Dec. 31, 1906, Record sent to E. D.
Jan'y 7, 1907, Argued.

March 11, 1907, The decree of the Superior Court is affirmed at appellants' costs.

Brown, J.

Mar. 18, 1907, Motion for rehearing filed.

Eo Die. Motion refused. *Per cur.* Mitchell, C. J.

Mar. 18, 1907, Petition for Writ of Error to Supreme Court of United States filed.

Eo Die, Petition refused, Mitchell, C. J.

158 *Eo Die,* Order of Supreme Court of Penna., Mitchell, C. J. filed, directing Prothonotary of the Court W. D. to certify only that portion of record as is printed in Appellants' paper book.

In the Supreme Court of the United States.

Appeal from the Supreme Court of Pennsylvania at No. 22, October Term, 1907.

March 20, 1907, Petition for Writ of Error to the Supreme Court of the United States filed.

Eo Die. Order of Court allowing Writ of Error and fixing bond for supersedeas filed.

Eo Die. Assignments of error filed.

Eo Die. Writ of Error filed.

Eo die. Bond in the sum of $5,000.00 approved by Hon. William H. Moody, A. J. S. C. filed.

159 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Appeal from Superior Court.

Filed March 11, 1907.

BROWN, *J.:*

On November 11, 1905, the governor of the state called the General Assembly into extraordinary session, to meet January 15, 1906, for the consideration of legislation upon seven subjects mentioned in his proclamation. The first was "To enable contiguous cities in the same counties to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate city governments." On January 9, 1906, he issued what he regarded as a second proclamation, for he entitles it a "proclamation." In it, after calling attention to the approaching extraordinary ses-

160 sion, he designates additional subjects for the consideration of the general assembly at said session, one of them being "To enable cities that are now or may hereafter be contiguous or

in close proximity, including any intervening land, to be united in one municipality, in order that the people may avoid the unnecessary burdens of maintaining separate municipal governments. This fourth subject is a modification of the first subject in the original call, and is added in order that legislation may be enacted under either of them, as may be deemed wise."

The extraordinary session was held, and at it there was passed, among other bills, the one now under consideration, approved February 7, 1906. It is entitled, "An act to enable cities that are now, or may hereafter, be contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each." The first section is as follows: "That wherever in this Commonwealth, now, or hereafter, two cities shall be contiguous or in close proximity to each other, the two,
161 with any intervening land other than boroughs, may be united and become one by annexing and consolidating the lesser city, and the intervening land other than boroughs, if any, with the greater city, and thus making one consolidated city, if at any election to be held as hereinafter provided, there shall be a majority of all the votes cast in favor of such union." The question of the consolidation of the cities of Pittsburgh and Allegheny was submitted to their lawful voters at an election held in pursuance of the provisions of the act, the result being a majority of 20,154 in favor of consolidation out of a total vote in the two cities of 55,574. Following this election the court of quarter sessions of Allegheny County, on June 16, 1906, "ordered, adjudged and decreed that the City of Allegheny, the lesser city, be annexed to and consolidated with the City of Pittsburgh, the greater or larger city, so that they form but one city and in the name of the City of Pittsburgh." From this decree an appeal was taken to the Superior Court. That Court affirmed it: Pittsburgh's Petition, 32 Sup. Ct., 210; and from the decree of the Superior Court we have this appeal, raising the question of the constitutionality of the act of 1906.

One of the objections of the appellants to the constitution-
162 ality of the act is that it is not legislation upon a subject designated in the proclamation of the governor calling the special session. This objection is based upon Article III sec. 25, of the constitution, which provides that "When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session."

In the original proclamation the legislation to be considered by the general assembly on the subject of the consolidation of cities was confined to contiguous cities in the same county, and it may be well contended that, as the mandate of the constitution is imperative that the legislature, at the special session, shall pass no law upon any subject not designated in the call, the act is technically without it. The act is not for the consolidation of two contiguous

cities, situated in the same county, but for that of any two, contiguous or in close proximity, wherever situated. They may be in different counties. We need not, however, pass upon the sufficiency of the first proclamation to sustain the act as being one of the subjects of legislation designated in it.

Whether the General Assembly ought to be called together in extraordinary session is always a matter for the executive alone. How it shall be called, and what notice of the call is to be given,
163 are also for him alone. The constitution is silent as to these matters, and wisely so, for emergencies may arise, such as riots, insurrections, wide-spread epidemics, or general calamities of any kind, requiring the instant convening of the legislature, and, in the power given to the governor to call it, no time for the notice is too short if it can reach the members of the General Assembly; and with telephones and telegraphs the uttermost portions of the commonwealth can at any time be reached between the rising and the setting of the sun. In this connection it may be noted as significant that the governor is not even required by Art. IV, sec. 12, empowering him to call the General Assembly together in extraordinary session, to do so by a proclamation, though the same section does provide that in calling the senate in extra session for the transaction of executive business he must do so by proclamation. A proclamation, however, is the proper mode of calling the legislature together, and the constitution seems to so contemplate, for sec. 25, Art. III, speaks of "the proclamation." But no form of proclamation is to be followed, and if, after one has been issued, it occurs to the executive that other subjects than those designated in it should
164 be passed upon by the legislature, he can unquestionably issue another, fixing the same time for the meeting of the General Assembly as was fixed in the first, and designate other subjects for its consideration. This is perhaps what ought to be done when other subjects than those designated in the proclamation are to be brought to the attention of the legislature in special session, and if it had been done in the present case the objection of the appellants now under consideration would hardly have been raised. This, however, is not for the judiciary, but for the governor alone. The proclamation of January 9 is in effect a second proclamation. In it the governor adopts his original call for the purpose of fixing the time of the meeting of the General Assembly, and then proceeds to designate the additional subjects of legislation. With every presumption in favor of compliance by the executive with the constitutional requirements relating to his calling the general assembly together in extraordinary session, it would be judicial hypercriticism to declare his second notice or proclamation insufficient to authorize the legislature to pass the act under consideration.

The objection most strenuously urged against the act is that it violates Art. III, sec. 7, of the constitution, which prohibits
165 the legislature from passing any local or special law regulating the affairs of cities. Is the act local or special, or is it general in its provisions? It provides for the consolidation of two cities of no particular class, but of any two cities belonging to the

same or different classes, wherever situated and whether on the same or in different counties. Whether two cities ought to be consolidated is purely a legislative question, and the general act providing for their consolidation is not forbidden legislation. The power of the legislature to provide for the annexation of cities is not limited by the constitution. What it may not now do is to regulate, by a local or special law, the affairs of cities. In providing for the annexation of any two cities of the commonwealth there is no regulation of the affairs of any two particular cities. The provision is simply for such annexation, if certain natural and, what may be regarded as necessary, conditions exist. The legislature might, without transgressing the constitution, have provided for the consolidation of cities without regard to the distance between them, absorbing in their consolidation all the intervening space, whether occupied by boroughs or townships. But such legislation is not conceivable, for the common sense of the people would not tolerate it. In providing
166 for annexation in the act of 1906 the legislature restrained its power to authorize consolidation in declaring that certain natural, reasonable and necessary conditions must exist, if two cities are to be united. No arbitrary, unnecessary conditions are prescribed; only reasonable ones are required. The legislature might have limited the right to consolidate to contiguous cities, but it extended this right to those in close proximity. While it is purely a legislative matter to determine what cities may be consolidated, it is clear that only those ought to be which are contiguous or in close proximity; and, in making contiguity or close proximity a condition of the right to consolidate, the affairs of no special city are regulated.

By the act any two cities contiguous or in close proximity may become one. No two contiguous cities are excluded from its provisions, and any two in close proximity may be united, provided that by their union they do not absorb and swallow up an intervening borough. The act does not prevent the consolidation of cities in close proximity between which there may be a borough, if that borough does not embrace all the land between them, or does not extend as a wedge throughout the entire length of the same. If a borough occupies all the land between two cities, they cannot be united
167 without absorbing such borough. They touch at no point, are not contiguous and are not in close proximity within the meaning of the act. But if the land between two cities in close proximity is not wholly occupied by a borough, or a borough does not extend throughout the entire length as a wedge in such intervening land, and there is township land connecting the cities at any point or points, they can be consolidated under the act, the township land becoming a part of the new city and the borough retaining its municipal existence. The act is, therefore, one, and must be so read, permitting the consolidation of any two cities contiguous or in close proximity, of whatever class and wherever situated, provided only that in such consolidation the separate existence of an intervening borough shall not be destroyed. If a borough oc-

cupies all of the space between them they are not contiguous, and, though in close proximity, they cannot physically unite without wiping out the borough. But, if a borough should not be all of the intervening land, they can unite by absorbing that land which the borough does not occupy—the intervening land beyond the borough limits—leaving it to continue its independent municipal life. At this point it may be well to call attention to the clear line of
168 demarcation between this act and that of April 20, 1905, P. L. 221, known as the Cook law, and declared to be unconstitutional in Sample *v.* Pittsburgh, 212 Pa., 533. It provided for the annexation of a smaller to a larger city when the two were contiguous and situated in the same county, and, for the purposes of the act, it was declared that "cities separated by a stream river or highway shall be included under the term contiguous." So clearly was it bald, special local legislation that it might well have been labelled an act for the consolidation of the cities of Pittsburgh and Allegheny. In forceful language our brother Mestrezat demonstrated the act to be local and special, and we quote at length from his opinion, for the converse of what he says of it is true of the act of 1906: "The title of the act clearly indicates the subject of the enacting part and discloses the local and special features of the statute. It shows that the act was not intended to apply to any two cities of the state so as to make it general in its operation, but conditions are imposed which restrict its application to certain cities, thereby depriving the other cities of the state of the benefit of its provisions. The statute is operative 'where two cities are contiguous and in the same county.' Its provisions can be invoked to
169 annex only two cities and when they Pittsburgh and Allegheny are the only two cities in the commonwealth separated by a stream or highway, and the fear that that fact would render those cities not contiguous within the meaning of the statute moved the promoters of this legislation to further identify them by inserting the clause in the act. This feature should not and cannot be ignored when the court is called upon to test the constitutionality of the statute as it clearly car-marks the legislation as local and special.

"There is no merit in the contention that at some time in the future there may be two other cities which may become contiguous and in that event can be consolidated under the provisions of the act. With a knowledge of the facts, known to the legislature as well as to the court, this is not within the range of probability, but a possibility so remote that it must be excluded from consideration in determining the constitutionality of the statute. It could only occur if a community adjacent to any of the cities of the state should become sufficiently populous to enable it to become a city and should take the necessary legal steps to make itself a city and subject to the operation of the act, or if the boroughs lying between and connecting certain cities of the state should, by the requisite legal pro-
170 ceedings, be annexed to those cities or form themselves into a city and thereby connect two existing cities so as to make the act operative. These are simply contingencies within the realm

of speculation and entirely too remote to support legislation otherwise repugnant to the constitutional mandate.

"The statute requires any two cities desirious of availing themselves of its provisions to be located in the same county. This confines the act in its operation to cities within certain territorial limits and brings it within the domain of special legislation, prohibited by the constitution. The act does not attempt to classify cities on any basis whatever. It provides simply that it shall operate upon two cities situated in the same county. It, therefore, excludes from its provisions and denies its privileges to all cities separated by a county line, or which are not wholly within the same county, although occupying contiguous territory. All cities whose boundaries are coterminus with the county line are perpetually excluded from the operation of the statute, although other cities may adjoin them at different parts of their boundaries. This distinction made in the act between the cities of the commonwealth is not based upon
171 necessity nor upon any grounds which the law recognizes as justifying classification. Its effect is to restrict the operation of the statute to two cities located in the same territorial division of the state; and when considered in the light of the conceded facts, it fixes with unmistakable certainty the two cities to be consolidated under its provisions. A clearer or more palpable attempt to evade the constitutional prohibition against special and local legislation is not disclosed in any of the numerous bills introduced in the general assembly since the adoption of the present constitution, not excepting the statute, which Mr. Justice Paxson in Commonwealth *v.* Patton, 88 Pa. 258 very properly characterized as 'classification run mad.'"

But what of this act? Its operation is not confined "to cities within certain territorial limits." It is general in its terms and refers to no classes of cities, but to all cities. It does not provide that it shall operate only "upon two cities situated in the same county." It does not exclude "from its provisions and deny its privileges to all cities separated by a county line, or which are not wholly within the same county," but extends them to any two cities within the commonwealth having natural, reasonable and necessary conditions of consolidation.

172 Counsel on both sides of this controversy have cited many cases on the classification of cities. By the appellant- we are referred to them as requiring us to declare the act local and special, regulating the affairs of cities, and, for the appellee, they are cited to sustain it; but as classification is not involved in the act, we need not consider the cases on that subject. That it applies now, and for the present can apply, only to the cities of Pittsburgh and Allegheny, and that it was passed for them, can make no difference if the legislation is general in form and substance, and is not within the prohibition of the constitution: Wheeler *v.* Philadelphia, 77 Pa., 338. Individual needs and requirements are responsible for much legislation which now must be general, and, when it is so, the causes that lead to it, or the particular purposes it is to serve at the time of its enactment, have nothing to do with its constitutionality. It

may meet at the time of its passage the wants of but one community, but if in the future it will meet those same wants in all other communities the legislation is as general as if at the time of its passage there had been no special reason calling for it.

The method of consolidation is said to be unconstitutional, because it is not by "due process of law," "in that it permits qualified
173 electors of the larger city to overpower or out-number those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified voters or electors of the lesser city." This is completely answered in the following extract from the opinion of the learned Judge speaking for the Superior Court: "In determining whether this act is contrary to that 'due process of law' guaranteed by the federal constitution, in providing that the electors of the consolidated territory shall determine the question of annexation of the lesser city instead of permitting the majority of the electors of the lesser city to decide it, we have many adjudicated cases which warrant the action taken by the legislature. The words 'due process of law,' as taken from Magna Charta and incorporated in the constitution, 'were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principle of private rights and distributive justice.' In each particular case the words mean 'such an exercise of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of
174 cases to which the one in question belongs: Cooley's Constitutional Limitations, 434. The people of the municipalities do not define for themselves their own rights, privileges and powers, nor, is there any common law which draws a definite line of distinction between the powers which may be exercised by the state and those which must be left to the local governments: 2 Kent's Commentaries, 278, 279. The general principle is that when the state is acting in its sovereign capacity, it acts for the whole commonwealth, and private rights and interests must yield to this paramount object. Private rights may be and very frequently are interfered with by either the legislature, executive or judicial departments of the government, and the creation of municipal corporations, and the conferring upon them of certain powers and subjecting them to corresponding duties, does not deprive the legislature of the state of that general control over their citizens which they before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, and overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and even abolish them
175 altogether in the legislative discretion and substitute those which are different: Cooley's Constitutional Limitations, 228. Restraints on the legislative power of control must be found in the constitution of the state, or they must rest alone in the legislative discretion. If the legislative action operates injuriously to the municipalities or to individuals the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to,

to right through the ballot box all those wrongs: Ervine's Appeal, 16 Pa. 256. Cooley's Constitutional Limitations, 228, 229, 230. The act in question has been passed with all the forms and ceremonies requisite to make it a valid statute. The legislature was properly convened and kept well within its powers in regulating the affairs of cities by a general law in accord with the requirements of the constitution.

"It follows under the law of the land, that neither the municipality as such, or any of the persons residing therein, have any vested rights in the municipal powers, as against the state which created the municipality. It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—subject to legislative control
176 'which may destroy its very existence with the mere breath of arbitrary decision:' Phila. *v.* Fox, 64 Pa. 169."

Authorities everywhere support the foregoing. In our own cases may be found the following: "The City of Philadelphia is beyond all question a municipal corporation, that is, a public corporation created by the government for political purposes, and having subordinate and local powers of legislation: 2 Kent's Com. 275; an incorporation of persons, inhabitants of a particular place, or connected with a particular district, enabling them to conduct its local civil government: Glover Mun. Corp. 1. It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—having no vested right to any of its powers or franchises—the charter or act of erection being in no sense a contract with the state and therefore fully subject to the control of the legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangement, or destroy its very existence, with the mere breath of arbitrary discretion. *Sic volo, sic jubeo,* that is all the sovereign authority need say. This much is undeniable, and has not been denied. * * * The sovereign may continue its
177 corporate existence, and yet assume or resume the appointments of all its officers and agents into its own hands; for the power which can create and destroy can modify and change:" Sharswood J., in Philadelphia *v.* Fox, 64 Pa., 169. "Municipal corporations are agents of the state, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined by the legislature, and subject to change, repeal, or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no state has it been more clearly expressed and more uniformly applied than in Pennsylvania. * * * The fact that the action of the state towards its municipal agents may be unwise, unjust, oppressive, or violative of the natural or political rights of their citizens, is not one which can be made the basis of action by the judiciary:" Commonwealth *v.* Moir, 199 Pa., 534.

Finally in a supplemental brief counsel for appellant contend that the 10th section of the act, which will have the effect of extending the term of councilmen in the city of Allegheny, violates Art. III, sec. 13, of the constitution, which provides that "no law shall extend the term of any public office." This objection does not seem to be seriously pressed, and as to it we need only repeat what
178 was said in Commonwealth *v.* Moir, *supra:* "The substitution of a new system for one under which government has been previously carried on is always accompanied with some shifting of offices and duties, and some inconvenience. To reduce this to a minimum by temporary adjustment of the changes is the province of a schedule. In well considered legislation which involves such changes a schedule of temporary expedients is usually and properly added, and the expedients provided would need to be very clearly unconstitutional to justify a court in overturning them. In Lloyd *v.* Smith, 176 Pa. 213, it is said: 'In an exchange of offices there may naturally be some overlapping of terms and duties, and if in the legislative view the need for a controller was immediate but the existing terms of the auditors prevented his present assumption of all the duties that would finally pertain to his office, it would not have been unwise, certainly not unconstitutional to meet the case by a temporary expedient.'"

The assignments of error are all dismissed and the decree of the Superior Court is affirmed at appellants' costs.

179 COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, George Pearson, Prothonotary of the Supreme Court of Pennsylvania, in and for the Western District thereof, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct copy of the whole and entire opinion in the case of *In Re* Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh, at No. 22 October Term, 1907, as full, entire and complete as the same remains on file in the said Supreme Court in the case there stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record, and of the whole of the original thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at Pittsburgh, in the County of Allegheny, in the said Western District of Pennsylvania this 22nd day of March, 1907 in the year of our Lord one thousand Nine Hundred and seven.

(Signed) GEO. PEARSON, *Prothonotary.*

180 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Motion for Re-hearing.

To the honorable the Chief Justice and Justices of the Supreme Court of the State of Pennsylvania:

And now, to wit, March 18th, 1907, comes D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman, and the City of Allegheny, the appellants in the above entitled case, by their Attorney, William A. Stone, of Pittsburgh, Pa., and most respectfully move the Court for a re-hearing or reargument of the above entitled case, and in support thereof set forth the following

Reasons:

First. This Court erred in dismissing the appellants'
181 fourth assignment of error, which is as follows:

"The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

Second. This Court erred in dismissing the appellants' fifth assignment of error, which is as follows:

"The Act of Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pittsburgh is in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of
182 Article 1, Section 9, Paragraph 10, of the Constitution of the United States, and therefore is unconstitutional."

Third. This Court erred in dismissing the appellants' sixth assignment of error, which is as follows:

"The Act of General Assembly under which this petition is filed is in conflict with Article V of the Amendments of the Constitution of the United States, because if the City of Allegheny shall be an-

nexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the value of the property, in violation of said Article V of the Amendments to the Constitution of the United States, and they, therefore, will be deprived of their property."

Fourth. This Court erred in dismissing the appellants' seventh assignment of error, which is as follows:

"The Act of Assembly under which this petition is filed is in conflict with Article XIV of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your re-
183 & 184 spondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in value of the property of your respondents."

Fifth. This Court erred in not holding that the Act of General Assembly of Pennsylvania, approved February 7th, A. D. 1906, entitled—"An Act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," was special or local legislation and in conflict with Article 3, Section 7, Sub-division 2 of the Constitution of the State of Pennsylvania, which constitutional provision provides that—"The General Assembly shall not pass any local or special law, regulating the affairs of counties, cities, townships, wards, borough or school-districts," and the said Act of Assembly being in conflict with said provision of the Constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the
185 14th Amendment of the Constitution of the United States.

Sixth. This Court erred in not holding that the said Act of Assembly, entitled as aforesaid, was passed at an extraordinary or special session of the Legislature, convened by the Governor of Pennsylvania, under Article 4, Section 12 of the Constitution of Pennsylvania, which provides that the Governor may, on extraordinary occasions, convene the General Assembly; and that the subject of the said legislation or Act of Assembly aforesaid was not designated in the proclamation of the Governor calling such session, or in the paper or proclamation issued by him dated January 9th, 1906, and is therefore in conflict with Article 3, Section 25, of the Constitution of Pennsylvania, which provides that "When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session" and that the said Act of Assem-

bly is, by reason thereof, not due process of law, and is in conflict with the 14th Amendment of the Constitution of the United States.

Very respectfully submitted,

WILLIAM A. STONE,

Attorney for D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckleman, and the City of Allegheny, Appellants.

186 COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared John A. Sauer who, being duly sworn according to law, deposes and says, that the averments contained in the foregoing reasons, are true, and this motion for re-hearing or re-argument is not interposed for the purpose of delay.

JOHN A. SAUER.

Sworn to and subscribed before me, this 15th day of March, 1907.

ALICE M. GODFREY,

[N. P. SEAL.] *Notary Public.*

My Commission expires Jan. 19th, 1909.

187 Supreme Court of Pennsylvania. Western District. No. 22 October Term, 1907. In the Matter of the Petition of the City of Pittsburgh, for Uniting, Annexing, and Consolidating the City of Allegheny to and with the City of Pittsburgh. Motion for re-hearing. And now, to-wit, March 18th, 1907, upon consideration of the within motion and reasons therefor, said motion for a re-hearing is hereby refused. *Per Curiam.* Mitchell, C. J. Filed March 18th, 1907. In Supreme Court. Stone & Stone, Attorneys at Law.

188 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Petition for Writ in Error.

To the Honorable Chief Justice of the Supreme Court of Pennsylvania:

The petition of D. Hunter, Jr., Robert K. Cochrane John A. Sauer, and Herman W. Heckleman, and the City of Allegheny, respectfully showeth:

That at a special session of the legislature of the State of Pennsylvania, convened by proclamation of the Governor to assemble on the 15th day of January, A. D., 1906, an Act of Assembly was passed, authorizing the consolidation of cities in the commonwealth of Pennsylvania that are contiguous or in close proximity,
189 under which Act of Assembly proceedings were begun in the Court of Quarter Sessions of Allegheny County by the City of Pittsburgh, to consolidate the City of Pittsburgh and the City of Allegheny, in Allegheny County, State of Pennsylvania.

That your petitioners filed exceptions to the Order of the Court of Quarter Sessions directing the consolidation of the two said cities, alleging that the said Act of Assembly was in conflict with the Constitution of the State of Pennsylvania and the Constitution of the United States, and was therefore unconstitutional.

That the Cities of Pittsburgh and Allegheny are the only two cities in the State of Pennsylvania that are contiguous or in close proximity to each other.

That upon hearing, the said Court of Quarter Sessions of Allegheny County dismissed the exceptions filed by your petitioners in said Court; whereupon an appeal was taken to the Superior Court of the State of Pennsylvania by your petitioners. That upon argument in the Superior Court of the State of Pennsylvania, said appeal was dismissed and the judgment of the Court of Quarter Sessions of Allegheny County was affirmed; whereupon your petitioners
190 took their appeal to the Supreme Court of the State of Pennsylvania, realleging that the said Act of Assembly was in conflict with the Constitution of the State of Pennsylvania and the Constitution of the United States.

That upon argument in the Supreme Court of the State of Pennsylvania, the said Supreme Court dismissed the exceptions filed by your petitioners, and affirmed the judgment of the Superior Court of the State of Pennsylvania.

That the judgment of the said Supreme Court of the State of Pennsylvania is a judgment of the highest Court of record of said State; that the judgment of the said Court is final.

That the decision and judgment of the Supreme Court of Pennsylvania is in violation of Article 1, Section 9, Paragraph 10, of the Constitution of the United States, and also in violation of Article V of the Amendments to the Constitution of the United States, and also in violation of Article XIV of the Amendments to the Constitution of the United States.

That the said Act of Assembly, which the said Supreme Court of Pennsylvania held to be constitutional, was in violation of not only the Constitution of the United States, but also of the Constitution of Pennsylvania.
191 And that the said Act of Assembly was not due process of law.

Your petitioners therefore pray for the allowance of a writ of error to the Supreme Court of Pennsylvania, in order that the judgment

of the said court may be reexamined and reversed or affirmed in the Supreme Court of the United States.

And they will ever pray.

JOHN A. SAUER.
ROB'T K. COCHRANE.
HERMAN W. HECKLEMAN.
D. HUNTER, JR.
CITY OF ALLEGHENY,
By LEE C. BEATTY, *City Solicitor.*

COMMONWEALTH OF PENNSYLVANIA, *County of Allegheny, ss:*

On this 15th day of March, A. D. 1907, before me, the subscriber, personally came John A. Sauer and Robt. K. Cochrane who, being duly sworn according to law, deposes and says that the above
192 petition is not presented for the purposes of delay, but because the petitioners believe injustice has been done them; and that the facts set forth in said petition are true and correct to the best of their knowledge and belief.

JOHN A. SAUER.
ROBT. K. COCHRANE.

Sworn to and subscribed before me this 15th day of March, 1907.

[SEAL.] ALICE M. GODFREY,
Notary Public.

My Commission Expires Jan. 19th 1909.

193 Supreme Court of Penna. Western District. No. 22 October Term, 1907. In the matter of the petition of the City of Pittsburgh for Uniting Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh. Petition for writ of error Let the writ of error issue upon the execution of a bond by petitioners to the Commonwealth of Penna. for use of the City of Pittsburgh in the sum of —— Dollars; said bond when approved to act as a supersedeas. —— ——, Chief Justice of the Supreme Court of the State of Pennsylvania. March 18, 1907, there being no Federal question involved the application for w-it of error is refused. James T. Mitchell Chief Justice of Pa. Filed Mar. 18, 1907 In Supreme Court.

194 In the Supreme Court of the United States.

No. —, —— Term, 1907.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER AND HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE CITY OF PITTSBURGH.

Petition for Writ of Error to the Supreme Court of the United States.

To the Honorable the Chief Justice and Justices of the above named Court:

The petition of D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman and the City of Allegheny, plaintiffs in error, by their attorney, William A. Stone, respectfully represents:

First. That the General Assembly of the State of Pennsylvania was convened in Special Session by a proclamation of the
195 Governor of said State to meet on Monday, January 15, 1906, at two o'clock P. M., to consider certain legislation designated in the proclamation of the Governor.

That the General Assembly so being in special session, convened by the proclamation of the Governor, did pass and enact into a law, a certain act entitled, "An act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," which Act of Assembly was approved by the Governor of the State of Pennsylvania, on February 7th, 1906.

Second. That the City of Pittsburgh did present its petition to the Court of Quarter Sessions of Allegheny County, on February 17th, 1906, praying for the annexation of the City of Allegheny to the City of Pittsburgh, and alleging that the cities were contiguous, situate in the County of Allegheny and State of Pennsylvania, at the junction of the Rivers, Monongahela and Allegheny.
196 Whereupon the Court directed said petition to be filed, and fixed Thursday, March 8th, 1906, at ten o'clock A. M. for the hearing of the petition, and directed that notice be given to the Mayor of the City of Pittsburgh and the Mayor of the City of Allegheny, and the Clerks of councils of each of said cities, and also directed notice by publication.

Whereupon the plaintiffs in error did file their exceptions and answer, under the provisions of said Act, against the said petition, setting up, among other things, that the Act of Assembly under which this petition was filed for the annexation of the City of Allegheny to the City of Pittsburgh, was in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States in that it impairs the obligations of the contract existing between the City of Allegheny and the plaintiffs in error, by which they were to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenses incidental to the government of the City of Allegheny, and the attempt to subject them to the increased taxes and burdens of the additional or enlarged city government, by legislation, is in violation of said Article 1, Section 9, Paragraph 10, of the Constitution of the United States, and therefore said Act is unconstitutional.

197 And further that the said Act of Assembly under which the petition was filed, is in conflict with Article 5, of the Amendments to the Constitution of the United States, because, if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving the plaintiffs in error of their property without due process of law, and is therefore unconstitutional.

And further that said Act of Assembly under which the petition was filed is in conflict with Article 14, of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh, deprives the plaintiffs in error of their property without due process of law.

And further that the said Act of Assembly under which the petition was filed, is in violation of the law of the land it being unfair, unjust and unequal, and is in conflict with the rights and privileges reserved by the people to themselves in that it permits qualified electors of the larger city to over-power and out-number those of the lesser city, and to annex the lesser city without the vote or consent of the majority of the qualified electors of the lesser city.

198 And further that the Act of Assembly under which the petition is filed, is local or special legislation in conflict with Article 3, Section 7, Sub-division 2, of the Constitution of the State of Pennsylvania.

And further that the Act of Assembly under which said petition was filed, was not designated in the call of the Governor for a special session, and is therefore in conflict with Article III, Section 25, of the Constitution of the State of Pennsylvania, which provides that when the General Assembly shall be convened in special session there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, all of which exceptions and others, will more fully and at large appear by reference to the certified copy of the record.

That the Cities of Pittsburgh and Allegheny are the only two cities in the State of Pennsylvania that are contiguous or in close proximity to each other.

Third. Whereupon the Court of Quarter Sessions of Allegheny

County did, on March 15, 1906, proceed to hear the arguments upon the exceptions and answer filed, and upon the petition, and did on April 25, 1906, dismiss the exceptions, and ordered and decreed an election to be held in the cities of Pittsburgh and Allegheny, on June 12th, 1906, for the people to vote for or against the
199 proposed consolidation or annexation of the City of Allegheny to the City of Pittsburgh. And afterwards, to wit, on June 16th, 1906, the returns of said election having been filed showing that 31,117 votes were cast in the City of Pittsburgh for said consolidation and 5,323 votes were cast in the City of Pittsburgh against it, and that in the City of Allegheny there were cast 6,747 votes for said consolidation and 12,307 votes cast against it, the Court did order, adjudge and decree that the City of Allegheny, the lesser city, be annexed and consolidated with the City of Pittsburgh, the greater or larger city, so that they form but one city, under the name of the City of Pittsburgh.

Exceptions being filed by the plaintiffs in error to said decree, the same were dismissed, whereupon the plaintiffs in error did appeal to the Superior Court of the State of Pennsylvania, and the record having been brought into said Court and argument being had thereon, on exceptions filed and the order of the Court of Quarter Sessions and the error assigned by the plaintiffs in error, to said petition, the said Superior Court of Pennsylvania did on November 10, 1906, over-rule the assignments of error filed by the plaintiffs in error, and affirm the decree of the Court of Quarter Sessions by a divided Court, two members of the seven dissenting.

200 Whereupon the plaintiffs in error did appeal to the Supreme Court of Pennsylvania, renewing their exceptions and assigning errors of the Court of Quarter Sessions of Allegheny County and the Superior Court of Pennsylvania which involved the several articles of the Constitution of the United States, and the case being duly argued in the Supreme Court of Pennsylvania, on the seventh day of January, 1907, was decided by said Court, by which decision the assignments of error made by the plaintiffs in error were all dismissed, and the decree of the Superior Court was affirmed. All of which will more fully and at large appear by reference to the certified copy of the record in this case.

Fourth. That under the rules of the Supreme Court of Pennsylvania, said record remains in the Prothonotary's Office of the Supreme Court of Pennsylvania, for a period of ten days from the rendering of the decision by the Supreme Court, at the end of which ten days, said judgment becomes in full force and effect, unless restrained by the Supreme Court of Pennsylvania either in the entertaining of a motion for reargument, or stay of execution, or in some other way, and that this judgment rendered by the Supreme Court of Pennsylvania in this case, will mature and be absolutely complete on the twenty-first day of March, 1907.

201 Fifth. That on the 18th day of March, 1907, the plaintiffs in error in this case through their attorney, appeared in the Supreme Court of Pennsylvania, and moved that Court to grant a rehearing in this case, setting forth the following reasons:

Reasons.

First. This Court erred in dismissing the appellant's fourth assignment of error, which is as follows:

"The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower and outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

Second. This Court erred in dismissing the appellants' fifth assignment of error, which is as follows:

"The Act of the Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pitts-
202 burgh is in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of Article 1, Section 9, Paragraph 10, of the Constitution of the United States, and therefore *us* unconstitutional."

Third. This court erred in dismissing the appellants' sixth assignment of error, which is as follows:

"The Act of General Assembly under which this petition is filed is in conflict with Article V, of the Amendments to the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional
203 burdens without compensation, and will depreciate the value of the property, in violation of said Article V of the Amendments to the Constitution of the United States, and they, therefore, will be deprived of their property."

Fourth. This Court erred in dismissing the appellants' seventh assignment of error, which is as follows:

"The Act of Assembly under which this petition is filed is in conflict with Article XIV of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh, deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in value of the property of your respondents."

Fifth. This Court erred in not holding that the Act of General Assembly of Pennsylvania, approved February 7th, 1906, entitled—

"An Act to enable cities that are now or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the con-
204 sequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," was special or local legislation and in conflict with Article III, Section 7, Sub-division 2, of the Constitution of the State of Pennsylvania, which constitutional provision provides that "The General Assembly shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, borough or school districts," and the said Act of Assembly being in conflict with said provision of the Constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the XIV Amendment of the Constitution of the United States.

Sixth. This Court erred in not holding that the said Act of Assembly, entitled as aforesaid, was passed at an extraordinay or special session of the Legislature, convened by the Governor of Pennsylvania, under Article IV, Section 12, of the Constitution of Pennsylvania, which provides that the Governor may, on extraordinary occasions, convene the General Assembly; and that the subject of the said legislation or Act of Assembly aforesaid was not desig-
205 nated in the proclamation of the Governor calling such session, or in the paper or proclamation issued by him dated January 9th, 1906, and is therefore in conflict with Article III, Section 25, of the Constitution of Pennsylvania, which provides that "When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session," and that said Act of Assembly is, by reason thereof, not due process of law, and is in conflict with the 14th Amendment of the Constitution of the United States."

And also did move the Chief Justice of the said Supreme Court of Pennsylvania to fix the amount of the bond to be given by the plaintiffs in error, for the stay of execution for a period of sixty days, to enable the plaintiffs in error to perfect their appeal in the Supreme Court of the United States, and did also move the Supreme Court of Pennsylvania to order a stay of execution and to direct that no mandate should issue in the case, for a period of sixty days, and to direct the Prothonotary of the Supreme Court of Pennsylvania not to send the record in this case to the Court of Quarter Sessions of Allegheny County during the said period, to enable the said
206 plaintiff in error to obtain the benefit of a supersedeas during the time that should be required to perfect their appeal in the Supreme Court of the United States.

And the plaintiffs in error did make affidavit that said motion was not for the purpose of delay, but that the stay of sixty days was the usual time granted in the practice and that it would take a long time to get the record copied in the Prothonotary's office of the Supreme Court of Pennsylvania, as said record was very large and cumbersome, and that unless said stay was granted, the said judgment would

ripen and mature on the twenty-first day of March, 1907, and the said decree of the Court of Quarter Sessions of Allegheny County would go into effect and the two cities become consolidated.

And the plaintiffs in error did further file a petition in the Supreme Court of Pennsylvania, asking the said Court to grant an allowance for a writ of error to the Supreme Court of the United States, and did file with their petition assignments of error alleged to have been committed by said Supreme Court of Pennsylvania, and did otherwise conform to a precedent heretofore established by the Supreme Court of Pennsylvania, heretofore recognized by the Court in seeking to lodge an appeal from a decision of said Court,
207 to the Supreme Court of the United States; but notwithstanding this, the said Chief Justice of the Supreme Court of Pennsylvania, the said Supreme Court being in session, did refuse to grant said rehearing or reargument and did refuse to stay the execution and mandate upon its decision, for a period of sixty days, or for any other period and did refuse to fix the amount of said bill, and did refuse the petition for the allowance of an appeal from the said Supreme Court of Pennsylvania, to the Supreme Court of the United States.

Whereupon the plaintiffs in error have no other remedy than to bring this their petition into the Supreme Court of the United States and allege that there is a federal question involved in this case, and for that matter, that there are several federal questions involved in this case, which questions have been questions at issue in all the Courts in which the case has been argued, and are in part, namely:

1. Whether the said Act of Assembly of the State of Pennsylvania, under which the said annexation of the City of Allegheny to the City of Pittsburgh has been ordered, is in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States.

208 2. Whether the said Act of Assembly is in conflict with Article V, of the Amendments to the Constitution of the United States.

3. Whether said Act of Assembly is in conflict with Article XIV of the Amendments to the Constitution of the United States.

4. Whether said Act of Assembly is in conflict with that principle or rule known as the "Law of the Land," in that the provisions of said Act of Assembly, as the facts appear in this case, simply compel the annexation of the City of Allegheny against the protests of nearly two out of every three of its voting citizens.

5. Whether the said Act of Assembly was special or local legislation and in conflict with Article III, Section 7, subdivision 2, of the Constitution of Pennsylvania, and if so, is due process of law.

6. Whether said Act of Assembly was designated in the proclamation of the Governor calling such special session, and if not, is not due process of law.

All of which federal questions were considered in the opin-
209 ion of Justice Brown of the Supreme Court of Pennsylvania, and although held by him not to be violations of the law of the land or the Constitution of the United States, your petitioners

assert their belief that it is the province of this Court, to determine for itself whether said Act of Assembly is in violation of the Constitution of the United States and the law of the land, and that that determination cannot be delegated to the Supreme Court of the State of Pennsylvania, or any other Court.

Wherefore your petitioners having no other remedy, bring this, their petition, in this Court, praying this Honorable Court to order a writ of error to issue from this Court, directed to the Supreme Court of Pennsylvania, commanding the Judges thereof to send the records of the proceedings aforesaid, and all things concerning the same, to the Supreme Court of the United States, at Washington; that the records and proceedings aforesaid being inspected, your Honors may cause further to be done therein to correct said errors, which of right and according to the laws and customs of the United States, should be done.

And your petitioners further pray that your Honors will
210 grant a supersedeas in this case, and direct that the *that the* City of Pittsburgh shall not proceed to enforce this judgment of the Supreme Court of the State of Pennsylvania, and that your Honors will further grant the plaintiffs in error a reasonable time in which to present in this Court, the transcript of the records of this case, which, when presented shall be filed *nunc pro tunc*, as if filed with this petition.

And your petitioners will ever pray, etc.

JOHN A. SAUER,
ROB'T K. COCHRANE,
HERMAN W. HECKLEMAN,
D. HUNTER, JR.,
CITY OF ALLEGHENY,
By LEE C. BEATTY, *City Solicitor.*

211 DISTRICT OF COLUMBIA, *ss:*

Before me the undersigned authority, personally came John A. Sauer who being duly sworn according to law, deposes and says that the averments contained in the foregoing petition are true to the best of his knowledge and belief, and that the writ of error prayed for is not intended for the purpose of delay.

JOHN A. SAUER.

Sworn and subscribed to before me this 18 day of March, 1907.

[John A. Whelan, Notary Public, District of Columbia.]

JOHN A. WHELAN,
Notary Public.

My Commission Expires Nov. 8, 1910.

212 Supreme Court of U. S. No. —, — Term, 1907. D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckleman and the City of Allegheny Plaintiffs in error *vs.* City of Pittsburgh. Petition for Writ of Error to the Supreme Court of the United States. Filed March 20, 1907. Supreme Court, W. D.

213 In the Supreme Court of the United States.

No. ——, —— Term, 1907.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Assignment of Errors.

Now come D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckleman and the City of Allegheny, plaintiffs in error in the above entitled action, by their attorney, William A. Stone, of Pittsburgh, Pa., and file herewith their petition for a writ of error, and say that there are errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed by the Supreme Court of the United States, make the following assignment:

First. The Supreme Court of the State of Pennsylvania
214 erred in dismissing the fourth assignment of error of the plaintiffs in error, which is as follows:

"The act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

Second. The Supreme Court of the State of Pennsylvania erred in dismissing the fifth assignment of error of the plaintiffs in error, which is as follows:

"The act of Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pittsburgh is in conflict with Article 1, Section 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of Article 1, Section 9, Paragraph 10 of the Constitution of the United States and therefore is unconstitutional."

215 *Third.* The Supreme Court of the State of Pennsylvania erred in dismissing the sixth assignment of error of the plaintiffs in error, which is as follows:

"The Act of General Assembly under which this petition is filed is in conflict with Article V of the Amendments of the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the sale of the property, in violation of said Article V, of the Amendments to the Constitution of the United States, and they, therefore, will be deprived of their property."

Fourth. The Supreme Court of the State of Pennsylvania erred in dismissing the seventh assignment of error of the plaintiffs in error, which is as follows:

"The Act of Assembly under which this petition is filed is in conflict with Article XIV of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your respondents
216 of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in value of the property of your respondents."

Fifth. The Supreme Court of the State of Pennsylvania erred in not holding that the Act of General Assembly of Pennsylvania, approved February 7th., A. D. 1906, entitled "An Act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each," was special or local legislation and in conflict with Article 3, Section 7, Sub-division 2 of the Constitution of the State of Pennsylvania, which constitutional provision provides that "The General Assembly shall not pass any local or special law, regulating the affairs of counties, cities, townships, wards, boroughs or school-districts," and the said Act of Assembly being in conflict with said provision of the Constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the 14th Amendment to the Constitution of the United States.

Sixth. The Supreme Court of the State of Pennsylvania
217 erred in not holding that the said Act of Assembly, entitled as aforesaid, was passed at an extraordinary or special session of the Legislature, convened by the Governor of Pennsylvania under Article 4, Section 12, of the Constitution of Pennsylvania, which provides that the Governor may, on extraordinary occasions, convene the General Assembly; and that the subject of the said

legislation or Act of Assembly, aforesaid, was not designated in the proclamation of the Governor calling such session, or in the paper or proclamation issued by him dated January 9th, 1906, and is therefore in conflict with Article 3, Section 25, of the Constitution of Pennsylvania, which provides that "When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session," and that the said Act of Assembly is, by reason thereof, not due process of law, and is in conflict with the 14th Amendment of the Constitution of the United States.

Seventh. The Supreme Court of Pennsylvania erred in dismissing the exceptions filed by the plaintiffs in error, thereby confirming the judgment of the court below.

Eighth. The Supreme Court of Pennsylvania erred in not entering judgment in favor of the plaintiffs in error and not reversing the judgment of the court below.

For which errors the plaintiffs in error, D. Hunter, Jr.,
218 Robert K. Cochrane, John A. Sauer, and Herman K. Heckleman and the City of Allegheny pray that the judgment of the said Supreme Court of Pennsylvania be reversed and a judgment entered in favor of the plaintiffs in error and for costs.

(Signed) WILLIAM A. STONE,
Attorney for D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman, and The City of Allegheny, Plaintiffs in Error.

Dated —— —, 1907.

219 In the Supreme Court of the United States.

No. ——, —— Term, 1907.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing, and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Order of Court.

And now, to wit, this 19th day of March, 1907, comes D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, and Herman W. Heckleman and the City of Allegheny, plaintiffs above named, by their attorney William A. Stone, and file herein and present their petition praying for an allowance of writ of error intended to be urged by

them, and praying also that a transcript of the record, proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent by the Supreme Court of the State of Pennsylvania to the Supreme Court of the United States; and that such other and further proceedings may be had as may be
220 proper in the premises on consideration whereof, the Court does allow the writ of error, upon the plaintiffs aforesaid giving bond according to law, in the sum of $5,000 which shall operate as a supersedeas bond.

WILLIAM H. MOODY,
A. J. S. C.

221 Supreme Court of the U. S. No. —, —— Term, 1907. D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckleman and the City of Allegheny, Plaintiffs in Error *vs.* City of Pittsburgh. Order of Court allowing Writ of Error and fixing bond for supersedeas. Filed March 20, 1907. Supreme Court, W. D. William A. Stone, Attorneys for Plaintiffs in Error.

222 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR UNITING, ANNEXING, AND CONSOLIDATING THE CITY OF ALLEGHENY TO AND WITH THE SAID CITY OF PITTSBURGH.

Bond.

Know all men by these presents: That we, D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckleman, of the City of Allegheny, County of Allegheny and State of Pennsylvania, as principals, and E. R. Kopp, Bernard Dovel and A. V. Purnell, as sureties, of —, Allegheny County, Pa., are held and firmly bound unto the Commonwealth of Pennsylvania, for the use of the City of Pittsburgh, in the sum of Five Thousand ($5,000.00) dollars, to be paid to the said City of Pittsburgh, its certain attorneys or
223 assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 15th day of March, A. D. 1907.

Whereas, the above named principals, plaintiffs in error, seek to prosecute their writ of error to the Supreme Court of the United States, to reverse the judgment entered in the above entitled action by the Supreme Court of Pennsylvania.

Now, therefore, the condition of this obligation is such, that if the above named plaintiffs in error shall prosecute their writ of error to effect, and answer all costs and damages that may be adjudged if

they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

JOHN A. SAUER,
ROBT. K. COCHRANE,
HERMAN W. HECKELMAN,
D. HUNTER, JR., *Principals.*
E. R. KOPP,
BERNARD DOVEL,
A. V. PURNELL, *Sureties.*

Sealed and delivered in the presence of
ALICE M. GODFREY.

224 Supreme Court of Penna., Western District. No. 22, October Term, 1907. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the City of Pittsburgh. Bond, $5,000. March 19th, 1907. Bond Approved. William H. Moody, A. J. S. C. Filed March 20, 1907. Supreme Court, W. D. Stone & Stone, Attorneys at Law.

225 STATE OF PENNSYLVANIA, *County of Allegheny, ss:*

E. R. Kopp, Bernard Dovel and A. V. Purnell, sureties being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of Pennsylvania and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Five thousand ($5,000.00) dollars over and above all debts, liabilities and exemptions.

E. R. KOPP.
BERNARD DOVEL.
A. V. PURNELL.

Sworn to and subscribed before me this 15th day of March, 1907.

[SEAL.] ALICE M. GODFREY,
Notary Public.

My Commission Expires Jan. 19, 1909.

226 *Agreement Between Counsel.*

And now, to wit, August 3rd, 1906, comes the City of Pittsburgh, by its counsel, W. B. Rodgers, and D. Hunter, Jr. Robert K. Cochrane, John A. Sauer and Herman Heckleman, by Stone & Stone, their counsel, and agree and stipulate that the following designated papers, composing a part of the record in the above entitled case, shall be omitted from the appendix of the Paper Book of Appellants, the statement of the omission of said papers to be sufficient evidence of the facts therein contained.

(1) General Certificate of the result of the election held June 12th, 1906, showing the total number of votes cast at said election to be

Pittsburgh	31,117 in favor	5,223 against
Allegheny	6,747 in favor	12,307 against
Total in both cities in favor of.....	37,864	
Total in both cities against.....		17,713

227 Resulting in a majority of 20,154 in favor of consolidation in both cities.

(2) Order of Court made at No. 71 Dec. Term, 1905, appointing John McGrew, Engineer to make survey of the boundaries of said cities and make return to court within nine months.

(3) Twenty one petitions signed by residents and freeholders numbering approximately 1,400, praying the Court to order the election prayed for by the City of Pittsburgh.

(4) Election Notice giving to the legal voters of Pittsburgh and Allegheny directions as to where they may vote, as required by the Act of Assembly.

(5) Order of Court of May 2, 1906, directing advertisements in newspapers of said election.

(6) Proofs of Publication of the notice of said election as required by the Order of Court and Acts of Assembly of the newspapers directed by the Court to contain said publications.

(7) Notice served that application will be made to the
228 court on Saturday, June 16, 1906, at 9:30 A. M. for a decree of consolidation.

W. B. RODGERS,
Counsel for City of Pittsburgh.
STONE & STONE,
Of Counsel for Exceptants.

Pittsburgh, August 3, 1906.

229 In the Supreme Court of Pennsylvania, Western District.

No. 22, October Term, 1907.

IN THE MATTER OF THE PETITION OF THE CITY OF PITTSBURGH FOR ANNEXING, UNITING, AND CONSOLIDATING THE CITY OF ALLEGHENY WITH THE CITY OF PITTSBURGH.

And now, towit, March 18, 1907 it is ordered that the Prothonotary in transcribing and certifying the record in this case shall transcribe and certify only that portion of the record as is printed in appellants' paper book in this Court by agreement of counsel of August 3rd 1906.

Per Curiam.

MITCHELL, *C. J.*

Certified from the Record.

In testimony whereof I have hereunto set my hand and the seal of said Court at Pittsburgh this twenty first day of March A. D. 1907.

[Seal of the Supreme Court of Pennsylvania, Western District, 1776.]

GEO. PEARSON,
Prothonotary.

230 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman, and The City of Allegheny, appellants, and The City of Pittsburgh, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and
231 the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution treaty, statute or commission; a manifest error hath happened to the great damage of the said appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
232 of the United States, the 19th day of March, in the year of our Lord one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM H. MOODY,
Associate Justice of the Supreme Court of the United States.

233 In the Supreme Court of the United States. In the matter of the petition of the City of Pittsburgh for uniting, annexing and consolidating the City of Allegheny to and with the City of Pittsburgh. D. Hunter Jr. *et al.* plaintiffs in error *vs.* City of Pittsburgh. Writ of error. Filed Mar. 20, 1907. Supreme Court, W. D.

234 UNITED STATES OF AMERICA, *ss:*

To the City of Pittsburgh, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Pennsylvania wherein D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman and The City of Allegheny are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William H. Moody, Associate Justice of the Supreme Court of the United States, this 19th day of March, in the year of our Lord one thousand nine hundred and seven.

WILLIAM H. MOODY,
Associate Justice of the Supreme Court of the United States.

20th March 1907 Service accepted.

W. B. RODGERS,
Solicitor for City of Pittsburgh.

235 *Certificate of Record.*

COMMONWEALTH OF PENNSYLVANIA, *County of Allegheny, ss:*

I, George Pearson, Prothonotary of the Supreme Court of Pennsylvania, for the Western District thereof, do hereby certify that the foregoing Record, pages 1 to — inclusive, is a true and faithful copy of the Record and Proceedings of the Supreme Court of Pennsylvania, in the Western District aforesaid, in a certain suit therein

pending, wherein D. Hunter Jr. *et al.* are appellants and City of Pittsburgh is appellee.

In testimony whereof I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this twenty second day of March in the year of — Lord one thousand nine hundred and seven.

[Seal of the Supreme Court of Pennsylvania, Western District, 1776.]

GEORGE PEARSON,
Prothonotary.

236 I, James T. Mitchell Chief Justice of the Supreme Court of Pennsylvania, do certify, that George Pearson was at the time of signing the annexed attestation and now is Prothonotary of the said The Supreme Court of Pennsylvania, in and for the Western District, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 22nd day of March in the year of our Lord one thousand nine hundred and seven.

JAMES T. MITCHELL.

I, George Pearson, Prothonotary of the Supreme Court of Pennsyvania in and for the Western District, do certify, that the Honorable James T. Mitchell by whom the foregoing Certificate was made and given, was at the time of making and giving the same and is now Chief Justice of the Supreme Court of Pennsylvania; to whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this 22nd day of March in the year of our Lord one thousand nine hundred and seven.

[Seal of the Supreme Court of Pennsylvania, Western District, 1776.]

GEORGE PEARSON,
Prothonotary.

Endorsed on cover: File No. 20,635. Pennsylvania supreme court. Term No. 670. D. Hunter, Jr., Robert K. Cochrane, John A. Sauer, Herman W. Heckleman, and The City of Allegheny, plaintiffs in error, *vs.* The City of Pittsburgh. Filed March 23d, 1907. File No. 20,635.

Office Supreme Court, U. S.
FILED.
APR 10 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

No. 264. OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

MOTION TO DISMISS OR AFFIRM.

W. B. RODGERS,
City Solicitor.

D. T. WATSON,
For the Motion.

Smith Bros. Co. Inc., Franklin Print. 412 Grant Street, Pittsburgh.

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IN THE

Supreme Court of the United States.

No. 670 OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

Motion to Dismiss or Affirm.

And now, April 15, 1907, comes the appellee, the City of Pittsburgh, by its counsel, and moves the Court to dismiss the Writ of Error in this case, because

(1) There is no Federal question in the case, and therefore, this Court has not jurisdiction.

And the said City of Pittsburgh (even if this Court has jurisdiction of the case) moves to affirm said decree, because:

(a) It is manifest that the writ of error was taken for the purpose of delay only:

(b) The questions upon which the jurisdiction depend are so frivolous as not to need further argument:

(c) The Federal questions attempted to be raised in this proceeding by the plaintiffs in error have been time and again decided by this court adversely to the present contention of the plaintiffs in error:

(d) The proceedings under the Act of the State of Pennsylvania, approved February 7th, 1906, now attacked, for the annexation of Allegheny City to Pittsburgh is a statutory and not a common law proceeding, and a writ of error will not lay to the affirmation by the Supreme Court of the State of the order or decree of the Court below:

Facts.

These proceedings began in the Court of Quarter Sessions of the Peace for Allegheny County in the State of Pennsylvania, at No. 71 December Sessions, 1905, on a petition of the City of Pittsburgh presented February 17th, 1906, alleging that the Cities of Allegheny and Pittsburgh were contiguous and asking that the lesser city (Allegheny) should be consolidated with the larger (Pittsburgh) so as to form one consolidated City, under the provisions of an Act of the State of Pennsylvania approved February 7th, 1906, For a copy of such Petition and Act see printed Record pages 1 6, 8

That Act provided, *inter alia*:

> "Section 1. Be it enacted, etc., That wherever in this Commonwealth, now or hereafter, two cities shall be contiguous or in close proximity to each other, the two, with any intervening land other than boroughs, may be united and become one by annexing and consolidating the lesser city, and the intervening land other than boroughs, if any, with the greater city, and thus making one consolidated city, if at an election to be held as hereinafter provided, there shall be a majority of all the votes cast in favor of such union."

The second section of the Act gave the Court of Quarter Sessions, a Court of record in Pennsylvania, jurisdiction of the proceedings.

The Court ordered the petition filed and directed notice to be given that the same would be heard on March 8, 1906 at 10 A. M. To the granting of the prayer of such petition, the present plaintiffs in error on March 7th, 1906, filed what they called "Exceptions and Answer," (See record, page 22.)

The exceptions were (22) twenty-two in number, but they all raised questions under the Constitution of Pennsylvania, (form of Governor's Proclamation, Special Legislation) except those numbered twelve (12), thirteen (13) and fourteen (14) which three are as follows:

> "(12th) The Act of assembly under which this Petition is filed for the annexation of the City of Allegheny to the City of Pittsburgh is in conflict with Article 1, Section 9, paragraph 10 of the Constitution of the United States in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government by legislation is in violation of said Article 1, Section 9, paragraph 10 of the Constitution of the United States, and therefore is unconstitutoinal."

> "(13th) The Act of General Assembly under which this Petition is filed is in conflict with Article 5, of the Amendments to the Constitution of the United States because, if the City of Allegheny should be annexed in pursuance of the Petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents and create additional burdens without compensation, and will depreciate the value of the property of your respondents, and they therefore will be deprived of their property in violation of said Ar-

ticle 5 of the Amendments to the Constitution of the United States.

"(14th) The Act of Assembly under which this Petition is filed is in conflict with Article 14 of the Amendments to the Constitution of the United States because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place, will cause a large depreciation in the value of the property of your respondents."

The answer of the City of Pittsburgh to these Exceptions is in part as follows:

" * * * The City of Allegheny will be much more benefitted by its annexation to the City of Pittsburgh than the City of Pittsburgh itself. Allegheny City, and especially its streets and parks are in a most deplorable condition, in no way comparing favorably with the streets and parks of the City of Pittsburgh, although in natural facilities the parks and streets of the City of Allegheny should be as advantageous for the citizens of Allegheny as the latter are for the old City of Pittsburgh.

"Real estate in Allegheny has fallen at least one-half in value in the last ten years, so that in many parts of the City it is impossible to either sell or rent property at fairly remunerative prices.

"Instead of the annexation of the City of Allegheny to Pittsburgh being a detriment to the taxpayes of Allegheny, it will be a decided benefit. Among the benefits to result from the annexed city will be the material reduction in the expenses of conducting the government of the two cities; the material reduction of taxation; the benefits which always accrue to a much larger city covering more area and having more inhabitants and industries. * * *

"It is denied as averred in the 12th Exception that any contract exists between the City of Allegheny and the Exceptants by which the Exceptants are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny.

"It is denied that the annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of the Exceptants and create additional burdens on the property of the Exceptants without compensation, or that it will depreciate the value of the property of the Exceptants. On the contrary, the annexation of the City of Allegheny to the City of Pittsburgh will greatly increase the value of the property of the Exceptants, and the contemplation even, of such annexation has already enhanced the value of the same.

"It is denied that by reason of the alleged additional taxes and burdens which the property of the Exceptants will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of the Exceptants; on the contrary thereof, the said annexation will largely increase the value of said property."

After these Exceptions and Answers were filed, the Court heard arguments upon the same, but no testimony was taken pro or con on any of these questions raised by the Exceptions or Answers.

April 25th, 1906, the Exceptions were dismissed, and on April 30th, 1906, the Court of Quarter Sessions decreed as follows:

> "It is ordered that an election be held in the cities of Pittsburgh and Allegheny on Tuesday, June 12th, 1906, to vote for or against the proposed consolidation of the City of Allegheny to and with the City of Pittsburgh as prayed for in the Petition in this case."

May 2d, 1906, Exceptions of the plaintiffs in error to the decree of the Court were filed and overruled by the Court.

The election was held June 12th, 1906, and on June 16th, 1906, the judges of the several Courts of Common Pleas of Allegheny County certified to the Court of Quarter Sessions of Allegheny County that on the 14th day of June, 1906, they had received and obtained the votes of the lawful voters of the Cities of Pittsburgh and Allegheny upon the question

> "Shall the City of Allegheny be consolidated to and with the City of Pittsburgh, thus making one consolidated city,"

and that they find the vote on the 12th day of June on such question as follows:

City of Pittsburgh	
In favor of consolidation	31,117 votes
Against consolidation	5,323 votes

City of Allegheny	
In favor of consolidation	6,747 votes
Against consolidation	12,307 votes

The total number of votes cast in favor of consolidation in Pittsburgh and Allegheny was 37,864 votes, and the total number of votes cast in Pittsburgh and Allegheny against consolidation was 17,713 votes, and the majority in favor of consolidation was 20,151.

June 16th, 1906, the Court of Quarter Sessions thereupon made an order as follows:

> "It is now ordered, adjudged and decreed that the City of Allegheny, the lesser City, be annexed and consolidated with the City of Pittsburgh, the greater or larger City, so that they form but one City, and in the name of the City of Pittsburgh."

June 16th, 1906, the plaintiffs in error presented Exceptions to the decree, which were overruled, and on the same day an appeal was taken to the Superior Court of the State of Pennsylvania, which by the order of Court was made a supersedeas.

This appeal was argued in the Superior Court of Pennsylvania on October 2d and 3rd, 1906 at No. 37 April Term, 1907, and that Court on November 19th, 1906, filed an opinion overruling the assignments of error and affirming the decree of the Court of Quarter Sessions of Allegheny County.

This is reported as *Pittsburgh Petition* 32 Pa. Superior Court Rpt. 210.

From this decree of the Superior Court, the plaintiffs in error were granted an appeal to the Supreme Court of Pennsylvania, which latter Court on March 11th, 1907, filed

an opinion overruling all the assignments of error and affirming the judgments and the decree of the Superior Court.

March 19th, 1907, Mr. Justice Moody granted a writ of error to the Supreme Court of Pennsylvania from this Court. Making the same a *supersedeas.*

The opinion of the Supreme Court of Pennsylvania is printed in the appendix to this book.

Points of Law.

FIRST.

There is no Federal question in the case, and therefore, this court has not jurisdiction.

The undisputed facts are that under the state act approved February 7th, 1906, (See Record, page 8), the City of Pittsburgh petitioned the Court of Quarter Sessions of Allegheny County in the State of Pennsylvania for the annexation of the City of Allegheny, a contiguous city, so that the two would make one consolidated city; that an election was held, as provided in the Act, and the legal voters of both cities voted for or against consolidation with the following result: 37,864 votes in favor of consolidation and 17,703 votes against; and thereupon the court decreed the consolidation. The people of Allegheny City cast 6,747 votes in favor of and 12,307 votes against consolidation; and the people of Pittsburgh cast 31,117 votes in favor and 5,323 votes against consolidation.

The sole objection of the plaintiffs in error is that the act is in violation of the Federal Constitution, because it permits a majority of all the people within the proposed consolidated city to decide the question of consolidation, even though a majority of the people of Allegheny City vote against it.

We confidently assert that these facts do not raise any Federal question whatever, and that this court has time and again so decided. That the consolidation of cities in the State of Pennsylvania is solely a matter for the state itself to determine, and the state may arbitrarily, or with or without a vote, annex one city to another without impairing the constitutional rights of the citizens of either old city.

The mere assertion that a federal question exists is insufficient. It must be real and substantial—

> "a real and not a fictitious Federal question is essential to the jurisdiction of this court over the judgment of the State Courts."

Wilson vs. North Carolina, 169 U. S., 595.

It must fairly arise and be fairly open to doubt.

Miller vs. R. R. Co., 168 U. S., 133.

To assert that a certain state of facts raises a Federal question, when the uniform decisions of this Court have decided the contrary, is *not* to raise a real, substantial Federal question.

In *Sutherland's Notes on the Constitution of the United States,* page 309, the rule as to municipal corporations is stated as follows, and numerous cases from this court are referred to in support of the doctrine.

> "Public corporations such as counties, towns and cities are created by the authority of the legislature and invested with subordinate legislative powers to be exercised for local purposes connected with the public good. The charters of such corporations cannot be considered contracts within the protection of the obligation clause, and the legislature has unlimited power to alter, annul or repeal them, unless the state constitution provides otherwise. A municipal corporation is a mere creature of the legislature, established for the purposes of government, and entirely subject to the legislative will; transactions between the legislature and such a corporation are in the nature of legislation rather than of compact, a power to alter and change public corporations and to adapt them to public purposes is implied on a grant of power, and may at any time be resumed by the legislature. These grants are not franchises in the original meaning of that word, but mandates only, and may be repealed except so far as rights acquired by third parties under them may be affected. * * * A municipal corporations' power do not rest upon contracts. with the state."

In the *Town of Mt. Pleasant vs. Beckwith,* 100 U. S., 514, which is a case where territory was taken from and added to the City of Racine and the Town of Mt. Pleasant and the Town of Caledonia, this court said: (p. 524)

> "Counties, Cities and Towns are municipal corporations created by the authority of the legislature, and derive all their powers from the source of their creation except where the constitution of the state otherwise provides. * * * Corporations of the kind are composed of all the inhabitants of the territory included within the political organization, each individual being entitled to participate in its proceedings; *but the powers of the organization may be modified or taken away at the mere will of the legislature, according to its own views of public convenience, and without any necessity for the consent of those composing the body politic.* * * * Institutions of the kind, whether called cities, towns or counties, are the auxiliaries of the state in the important business of municipal rule; but they cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between themselves and the legislature of the state, because there is not and cannot be any reciprocity of stipulation between the parties, and for the further reason that their objects and duties are utterly incompatible with everything partaking of the nature of compact.
>
> "Instead of that, the constant practice is to divide large municipalities and to consolidate small ones, or set off portions of territory from one and annex it to another to meet the wishes of the residents or to promote

the public interests, as understood by the legislature, it being everywhere understood that the legislature possesses the power to make such alterations and to apportion the common property and burdens as to them may seem just and equitable.

"Alterations of the kind are often required to promote the public interests or the convenience and necessities of the inhabitants; and public history shows that it has been the constant usage in the state to enlarge or diminish the power of towns, to divide their territory by set off and annexation, and to make new towns whenever the legislature deems it just and proper that such a change should be made. Old towns may be divided and new ones incorporated out of parts of the territory of those previously organized;"

Again on page 529 this court said:

"Municipal corporations, says Mr. Justice Field, so far as they are invested with subordinate legislative powers for local purposes, are mere instrumentalities of the state for the convenient administration of their affairs. * * * Modifications of their boundaries may be made or their names may be changed or one may be merged in another, or it may be divided, and the moities of their territory may be annexed to others."

Again on page 531:

"Corporations of a municipal character, such as towns, are usually organized in this country by special acts or pursuant to some general state law, and it is clear that their powers and duties differ in some important particulars from the towns which existed in

the parent country before the Revolution when they were created by special charters from the crown and acquired many of their privileges by prescription, without any aid from Parliament. Corporate franchises of the kind granted during that period partook much more largely of the nature of private corporations than do the municipalities created in this country and known as towns, cities and counties. *Power exists here in the legislature, not only to fix the boundaries of such municipality when incorporated, but to enlarge or diminish the same subsequently without the consent of the residents, by annexation or set off, unless restrained by the Constitution, even against the remonstrance of every property holder and voter within the limits of the original municipality.*

"Property set off or annexed may be benefitted or burdened by the change and the liability of the residents to taxation may be increased or diminished, but the question in every case is entirely within the control of the legislature, and if no provision is made, every one must submit to the will of the state as expressed through the legislative department. Inconvenience will be suffered by some, while others will be greatly benefited in that regard by the change. *Nor is it any objection to the exercise of the power that the property annexed or set off will be subjected to increased taxation.* Or that the town from which it is taken or to which it is annexed will be benefited or prejudiced unless the constitution prohibits the change, since it is a matter, in the absence of constitutional restriction, which belongs wholly to the legislature to determine."

In *Laramie County vs. Albany Co.*, 92 U. S. 307, where the legislature had diminished the area of one county and increased the area of another, it was ruled: (p. 310)

> "Corporations of the kind are properly denominated public corporations for the reason that they are but parts of the machinery employed in carrying on the affairs of the state; and it is well settled law that charters under which such corporations are created may be changed, modified or repealed as the exigencies of the public service or the public welfare may demand. * * * such corporations are composed of all the inhabitants of the territory included in the political organization; and the attribute of individuality is conferred on the entire mass of such residents, *and it may be modified or taken away at the mere will of the legislature, according to its own views of public convenience and without any necessity for the consent of those composing the body politic.*"

In *Covington vs. Kentucky*, 173 U. S. 231, this court said: (p. 241)

> "A municipal corporation is a public instrumentality established to aid in the administration of the affairs of the State. Neither its charter nor any legislative act regulating the use of property held by it for governmental or public purposes, is a contract within the meaning of the Constitution of the United States. * * *

"In *New Orleans vs. New Orleans Water Works Co.* 142 U. S., 79, 901, after referring to previous adjudications, this court said that the authorities were full and conclusive to the point that a municipal corporation, being a mere agent of the State, 'stands in its governmental or public character in no contract relations with its sovereign, at whose pleasure its charter may be amended, *changed or revoked, without the impairment of any constitutional obligation, while with respect to its private or proprietary rights and interests it may be entitled to the constitutional protection.*' Chancellor Kent, in his Commentaries, says: 'In respect to public or municipal corporations which exist *only* for public purposes, as counties, cities and towns, the legislature, under proper limitations, has a right to change, modify, enlarge, restrain or destroy them; securing, however, the property for the uses of those for whom it it was purchased. A public corporation, instituted for purposes connected with the administration of the government, may be controlled by the legislature, because such a corporation is not a contract within the purview of the Constitution of the United States."

In *Attorney General of the State of Michigan vs. Lowry,* 199 U S., 233, which was a question of the division of the property of municipal corporation, this court holding that there was no Federal question, said:
(p. 240):

"Institutions of the kind, whether called counties or towns, are the auxiliaries of the State in the im-

portant business of municipal rule, and cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between them and the legislature of the State, because there is not and cannot be any reciprocity of stipulation, and their objects and duties are utterly incompatible with everything of the nature of compact. Instead of that, the constant practice is to divide large counties and towns, and to consolidate small ones, to meet the wishes of the residents, or to promote the public interests as understood by those who control the action of the legislature. Opposition is sometimes manifested but it is everywhere acknowledged that the legislature possesses the power to divide counties and towns at their pleasure and to apportion the common property and the common burdens in such manner as to them may seem reasonable and equitable."

In *Worcester vs. Worcester Street Railway Co.,* 196 U S. 539, this court said (p. 549):

"A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department. The legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the state. * * *

As is stated in *United States vs. Baltimore & Ohio R. R. Co.,* 17 Wall., 322, 329, a municipal corporation

is not only a part of the state, but is a portion of its governmental power. 'It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the state. The state may withdraw these local powers of government at pleasure, and may, through its legislative or other appointed channels, govern the local territory, as it governs the state at large. It may enlarge or contract its powers, or destroy its existence.'"

"* * * that such corporations were composed of all the inhabitants of the territory included in the political organization; and the attribute of individuality is conferred on the entire mass of such residents, and it may be modified or taken away at the mere will of the legislature, according to its own views of public convenience, and *without any necessity for the consent of those composing the body politic.*

In *Mt. Pleasant vs. Beckwith,* 100 U. S., 514, it was held that where no constitutional restriction is imposed, the corporate existence and powers of counties, cities and towns are subject to the *legislative control of the state creating them.*

In *New Orleans vs. New Orleans Waterworks Co.,* 142 U. S. 79, it was also held that a municipal corporation was the mere agent of the state in its governmental character, and was in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed or revoked *without the impairment of any constitutional obligations."*

In *Meriwether vs. Garrett,* 102 U. S., 472, an Act was passed by the state of Tennessee for the revocation of the charter of the City of Memphis.

This court, sustaining the power of the state, said (p 511)

> "The right of the state to repeal the charter of Memphis cannot be questioned. Municipal corporations are mere instrumentalities of the state for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. This is common learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers. There is no contract between the state and the public that the charter of a city shall not be at all times subject to legislative control. *All persons who deal with such bodies* are conclusively presumed to act upon knowledge of the power of the legislature. *There is no such thing as a vested right held by any individual in the grant of legislative power to them.*"

In *Kelly vs. City of Pittsburg,* 104 U. S., 78, where the State of Pennsylvania passed an Act whereby part of the Township of Collins became part of the City of Pittsburg, and Kelly filed a bill alleging that he owned property in Collins Township which thereby became part of the City of Pitts-

burg; that taking it into the City increased his taxes and that he thereby was deprived of his property without due process of law.

This court, affirming the decision of the Court below, (p. 80) said:

> "The distinct ground on which this provision of the Constitution of the United States is invoked is, that as the land in question is, and always has been, used as farm land, for agricultural use only, subjecting it to taxation for ordinary city purposes deprives the plaintiff in error of his property without due process of law. It is alleged, and probably with truth, that the estimate of the value of the land for taxation is very greatly in excess of its true value. Whether this be true or not we cannot here inquire. We have so often decided that we cannot review and correct the errors and mistakes of the State tribunals on that subject that it is only necessary to refer to those decisions without a restatement of the argument on which they rest. *State Railroad Tax Cases,* 92 U. S. 575; *Kennard vs. Louisiana, id.* 480; *Davidson vs. New Orleans,* 96 id. 97; *Kirtland vs. Hotchkiss,* 100 id. 491; *Missouri vs. Lewis,* 101 id. 22; *National Bank vs. Kimball,* 103 id. 732.
>
> "But, passing from the question of the administration of the law of Pennsylvania by her authorities, the argument is, that in the matter already mentioned the law itself is in conflict with the Constitution.
>
> "It is not denied that the legislature could rightfully enlarge the boundary of the city of Pittsburg so as to include the land. If this power were denied, we are unable to see how such denial could be sustained. *What portion of a State shall be within the limits of a city*

and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. How thickly or how sparsely the territory within a city must be settled is one of the matters within legislative discretion. Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most *usual and ordinary subjects of State legislation.*"

In *Dillon on Municipal Corporations,* Vol. 1, Section 185, 4th Ed., after an elaborate citation of authorities, the doctrine is stated as follows:

"Not only may the legislature originally fix the limits of the corporation, but it may, unless especially restrained in the Constitution, subsequently annex or authorize the annexation of contiguous or other territory, and this without the consent, and even against the remonstrance of the majority of persons residing in the corporation or on the annexed territory. And it is no constitutional objection for the exercise of this power of compulsory annexation that the property thus brought within the corporate limits will be subject to taxation to discharge a pre-existing municipal indebtedness, since this is a matter which in the absence of special constitutional restriction, belongs wholly to the legislature to determine."

In *Cooley's Constitutional Limitations,* 7th Ed. pp. 266, *et seq.,* the rule is laid down as follows:

> "That the legislature * * * has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion, and substitute those which are different. The rights and franchises of such a corporation, being granted for the purposes of government, can never become such vested rights as against the State that they cannot be taken away, nor does the charter constitute a contract in the sense of the constitutional provision which prohibits the obligation of contracts being violated. Restraints on the legislative power of control must be found in the Constitution of the State or they must rest alone in the legislative discretion. If the legislative action in these cases operates injuriously to the municipalities or to individuals, the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to to right through the ballot boxes all these wrongs."

See numerous cases cited in the different notes to this section.

Rule in Pennsylvania.

In no state has the legislative power to revoke a charter of a municipality or to consolidate counties or cities or towns with or without the vote of the people connected therewith and affected thereby or even against their protest, been more consistently and strongly maintained than in Pennsylvania. In one of our very latest cases the law is thus laid down:

See *Comomnwealth vs. Moir,* 199 Pa., 541:

> "Municipal corporations are agents of the State, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed and the extent of their powers determined by the legislature, and subject to change, repeal, or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no state has it been more clearly expressed and more uniformly applied than in Pennsylvania."

See the opinion in this case in the Appendix.

This fact was recognized by this court in the case of *Laramie County vs. Albany County,* 92 U. S., 112, where some of the cases in this state are referred to.

See also the decision of this court in *Kelly vs. Pittsburgh,* 104 U. S. 78.

A brief consideration of each assignment of error.

The first assignment of error is:

FIRST. "The Act of General Assembly under which these proceedings are had is in violation of the law of the land, it being unfair, unjust and unequal, and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those of the lesser city and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lessor city."

It seems plain that:

(a) This point does not raise any distinct Federal question. It does not refer to the Federal Constitution or to any of the rights of the citizens of the United States as distinguished from the rights of the citizens of the State.

(b) As a question of fact, it is extremely difficult to see why a majority of all the people living within, say an area comprised within five circular miles from the Court House, should not decide upon their form of municipal

government, and whether they should constitute one or or two cities. This is exactly what is done in this case. The citizens of Pittsburgh and the citizens of Allegheny City neither had any vested right in the continuity of the municipal government of either city, as the cases cited *ante* show. Whether for the future they will be united in one city or in two is purely a legislative question.

Commonwealth vs. Moir, 199 Pa. 541.

(c) The reasoning of the plaintiffs in error is that the consent of the citizens of Allegheny to the consolidation was a *sine quo non*, just as was argued in *Kelly vs. City of Pittsburgh*, 104 U. S., 78, and other cases cited at length *supra*. By a parity of reasoning, if a minority of the inhabitants of Allegheny City objected to the consolidation, they could defeat it, or really, if any one citizen of Allegheny City objects, he could defeat it, which of course is an absurdity.

Second. The second assignment of error that the legislation in Pennsylvania

> "Impairs the obligations of the contract existing between the City of Allegheny and your respondents by which they are to be taxed only for the government of the City of Allegheny, and for improvements, repairs and expenditures incidental to the government of said City of Allegheny, and the attempt to subject it to the increased taxes and burdens of an additional or enlarged city government by legislation is in violation of Article 1, Section 9, Paragraph 10 of the Constitution of the United States, and therefore is unconstitutional."

This was one of the original Exceptions filed in the Court of Quarter Sessions of Allegheny County, and the appellee, the City of Pittsburgh, answered it as follows:

(See page 30 of the record)

"It is denied as averred in the 12th Exception that any contract exists between the City of Allegheny and the exceptants by which the Exceptants are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny.

"It is denied that the annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of the Exceptants and create additional burdens on the property of the Exceptants without compensation, or that it will depreciate the value of the property of Exceptants. On the contrary, the annexation of the City of Allegheny to the City of Pittsburgh will largely increase the value of the property of the Exceptants, and the contemplation even of such annexation has already enhanced the value of the same.

"It is denied that by reason of the alleged additional taxes and burdens which the property of the Exceptants will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of the Exceptants. On the contrary thereof, the said annexation will largely increase the value of said property."

The record will show that there was absolutely no evidence to support this averment of contract. Where the plaintiffs in error rely in this court on a contract which they

allege is violated, the burden is upon them to show that such contract exists, and this they must establish to the satisfaction of this court.

Holyoke Co. vs. Lyman, 15 Wall., 511.

Cooley's Constitutional Limitations, pp. 383,387, 388.

The cases cited *ante* are conclusive to the proposition that municipal corporations are the mere creatures of the State, and for their continuity depend solely upon the discretion of the State legislature. They can be changed in any way as the State legislature determines. It would be impossible that the claim of the plaintiffs in error could be true, that there was a contract between them and Allegheny City that they should be taxed only for the government of the City of Allegheny. If so, any one citizen in Allegheny could prevent all changes in municipal governments so far as the area of the City is concerned.

This would be most remarkable in a City which has been made up mostly by legislative Acts.

A portion of Duquesne Borough was annexed to the City of Allegheny by an Act of March 16th, 1868, P. L., 352; a portion of McClure Township was so annexed by Act of March 20th, 1870, P. L. 562, and part of Reserve Township by the Act of April 4th, 1872, P. L. 926, and the balance of McClure Township by the Act of April 15th, 1873, P. L. 787.

THIRD. That the Act of Pennsylvania in question is in conflict with Article 5 of the Amendment to the Federal Constitution because it will be depriving the plaintiffs in error of their property without due process of law.

> "Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents and create additional burdens without compensation, and will depreciate the value of the property in violation of said Article 5 of the Amendment to the Constitution of the United States, and they therefore will be deprived of their property."

We have just cited the extracts from the Answer of the City of Pittsburg filed in the Court of original jurisdiction in Pennnsylvania where these averments are all denied, and wherein it is stated that the property of the plaintiffs will be appreciated and not depreciated by the consolidation.

The consolidation itself does not deprive any citizen of any of his property. He still owns and holds his property as before. The plaintiffs in error admit this, and therefore add that the way in which it will deprive him of his property is by adding additional taxes and additional burdens, and by a depreciation in the value of the property.

This the City of Pittsburg has denied, and there is absolutely nothing in the record which will support these averments of the Exceptants.

In addition, they are the identical questions which were raised and decided by this court in *Kelly vs. City of Pittsburg,* 104 U. S., 78, and other cases cited ante.

FOURTH. This assignment is that the Act of Assembly is in violation of the 14th Amendment.

> "Because the said annexation of the City of Allegheny to the City of Pittsburg deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of your respondents."

These are the same averments which the City of Pittsburg denied in the court of Quarter Sessions, which denial we have cited above. There is nothing in the record to sustain the facts averred. Instead of the annexation depreciating the value of the property of the plaintiffs in error, it will greatly increase the value, as indeed, it has already done; instead of adding additional taxes and burdens it will decrease the taxes and burdens now imposed upon the properties of said citizens of Allegheny. Under the said Act of Assembly, Section 8 (see record, page 10.....) it was provided that each of the constituent cities should pay its own debts and liabilities, and these should be found by a proceeding in the Court of Quarter Sessions, so that by the annexation no one of the citizens of Allegheny is in any way affected by the debts and obligations of the City to Pittsburg.

The cases we cited above are full to the effect that as this legislation provided for proceedings in the courts of the State of Pennsylvania, and as the plaintiffs in error had been fully heard, on these different questions they have had due process of law, and the Supreme Court in finally decreeing

the consolidation of the two cities has affirmatively decided that the proceedings are due process of law.

Section two of the State Act expressly lodges the jurisdiction in the County Quarter Sessions of Allegheny County, a court of record of the State of Pennsylvania.

The Fifth and Sixth Assignments of Error were not made in the State court.

FIFTH. That the Act of the State of Pennsylvania for the annexation of cities was special and local legislation under the Constitution of Pennsylvania,—

> "and the said Act of Assembly being in conflict with said provision of the constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the Fourteenth Amendment of the Constitution of the United States."

The propositions are:

(a) That the State Act of Pennsylvania is special legislation in conflict with Article 3 of the State Constitution:

(b) That being so, it is not due process of law, and therefore violates the Fourteenth Amendment.

But the Supreme Court of Pennsylvania, in this very case has held (see the opinion in the record) that the Act is not in violation of the State Constitution, and is not special

legislation; and this decision settles the question for this Court.

In *Claiborn County vs. Brooks,* 111 U. S. 400, 410, it was said:

> "It is undoubtedly a question of local policy with each state what shall be the extent and character of the powers which its various political and municipal organizations shall possess; and the settled decisions of its highest courts on this subject will be regarded as authoritative by the courts of the United States; for it is a question that relates to the internal constitution of the body politic of the state."

Wilson vs. North Carolina, 169 U. S. 586, 592-594;

Forsythe vs. Hammond, 166 U. S. 519;

Burgess vs. Seligman, 107 U. S. 20, 33;

See the cases collected on page 519 of 166 U. S.

The idea that due process of law is violated in this case receives a conclusive answer by the showing of the plaintiffs in error that they were heard in the State Courts of Pennsylvania which had full jurisdiction of the controversy. They were heard in the Court of Quarter Sessions of Allegheny County, in the Superior Court of Pennsylvania and in the Supreme Court of Pennsylvania, all of which courts decided against them.

These Courts had full jurisdiction of the subject-matter and of the questions in controversy under the State legislation, and State Constitution.

The Supreme Court of Pennsylvania, considering in this case whether the proceedings were due process of law, said:

> "The method of consolidation is said to be unconstitutional because it is not by 'due process of law, in that it permits electors of the larger city to overpower or outnumber those of the lesser city and to annex the lesser city without the vote or consent of majority of the qualified voters or electors of the lesser city.'
>
> "This is completely answered in the following extract from the opinion of the learned Judge speaking for the Superior Court:
>
> " 'In determining whether this act is contrary to that "due process of law" guaranteed by the Federal Constitution in providing that the electors of the consolidated territory shall determine the question of annexation of the lesser city, instead of permitting the majority of the electors of lesser city to decide it, we have many adjudicated cases which warrant the action taken by the Legislature. The words "due process of law" as taken from Magna Charta, and incorporated in the Constitution, were intended to secure the individual from the arbitrary exercise of the powers of government unrestrained by the established principle of private rights and distributive justice.'

"In each particular case the words mean: Such an exercise of the powers of government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims, prescribe for the class of cases to which the one in question belongs: *Cooley's Constitutional Limitations* 434. The people of the municipalities do not define for themselves their own rights, privileges and powers, nor is there any common law which draws a definite line of distinction between the powers which may be exercised by the State and those which may be left to the local government: 2 *Kent's Commentaries,* 278-279. The general principle is that when the State is acting in its sovereign capacity it acts for the whole Commonwealth and private rights and interests must yield to this paramount object.

"Private rights may be and very frequently are interfered with by either the Legislature, executive or judicial departments of the Government, and the creation of municipal corporations and the conferring upon them of certain powers and subjecting them to corresponding duties does not deprive the Legislature of the State of that general control over their citizens which they before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one and overrule their legislative action whenever it is deemed unwise, impolitic, or unjust, and even abolish them altogether in the legislative discretion and substitute those which are different.—*Cooley's Constitutional Limitations,* 228.

"Restraints on the legislative power of control must be found in the condition of the State or they must rest alone in the legislative discretion. If the legislative action operates injuriously to the municipalities or to indi-

viduals, the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to to right through ballot box all these wrongs.—*Ervine's Appeal,* 16 Pa., 256. *Cooley's Constitutional Limitations,* 228, 229, 230.

"The act in question has been passed with all the forms and ceremonies requisite to make it a valid statute. The Legislature was properly convened and kept well within its powers in regulating the affairs of cities by a general law in accord with the requirements of the Constitution.

"It follows, under the law of the land, that neither the municipality as such nor any of the persons residing therein have any vested rights in the municipal powers as against the State which created the municipality. It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—subject to legislative control which may destroy its very existence with the mere breath of arbitrary decision.—*Philadelphia vs. Fox,* 64 Pa., 169.

"Authorities everywhere support the foregoing. In our own cases may be found the following: The City of Philadelphia is, beyond all question, a municipal corporation, that is, a public corporation created by the Government for political purposes and having subordinate and local powers of legislation: 2 Kent's Com. 275; an incorporation of persons, inhabitants of a particular place or connected with a particular district, enabling them to conduct its local civil government: *Glover Mun. Corp.* 1.

"It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—having no vested right to any of its powers or franchises—the charter or power of erection being in no wise a contract with the State, and therefore full insubordinate to the control of the Legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangements, or destroy its very existence with the mere breath of arbitrary discretion.

"*Sic volo sio jubeo,* that is all the sovereign authority need say. This much is undeniable and has not been denied—the sovereign may continue its corporate existence and yet assume and resume the appointments of all its officers and agents into its own hands, for the power which can create and destroy can modify and change." Sharswood, J., in *Philadelphia vs. Fox,* 64 Pa., 169. "Municipal corporations are agents of the State invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed and the extent of their powers

determined by the Legislature and subject to change, repeal or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers or even their corporate expense. This is the unusual rule of constitutional law, and in no State has it been more clearly expressed and more uniformly placed than in Pennsylvania. The fact that the action of the State toward its municipal agents may be unwise, unjust, oppressive or violative of the natural or political rights of their citizens is not one which can be made the basis of action by the judiciary."—*Commonwealth vs. Moir,* 199 Pa., 534.

The plaintiffs have had the questions duly decided after a fair hearing in the State Courts. They have had due process of law. The plaintiffs have not been deprived of any constitutional right of that kind.

This Court has often so decided:

In re Kemmler, 136 U. S., 448;

Morley vs. Lake shore Railroad Company, 146 U. S., 171;

Allen vs. Georgia, 166 U. S. 140.

In *Hurtado vs. California,* 110 U. S., 534, it is said:

"It is not possible to hold that a party has, without due process of law, been deprived of his property, when as regards the issues effecting it, he has, by the laws of the state, a fair trial in a court of justice according to the modes of proceeding applicable to such a case."

SIXTH. The assignment of Error is that the Act of the State of Pennsylvania in question was passed at an extraordinary session, and the subject of said legislation was not designated in the proclamation of the Governor calling the session, and therefore was in violation of the state constitution,

"and that the said Act of Assembly is by reason thereof not due process of law, and is in conflict with the Fourteenth Amendment of the Constitution of the United States."

Here again the propositions are two-fold:

(I) Violation of the State Constitution.

(II) Therefore not due process of law.

But as the decision of three courts in Pennsylvania show, the exceptants argued this question there, and all the courts

overruled their position and held that there was no violation of the state constitution.

This decision is authoritative in this Court.

The same cases cited as to the Fifth Assignment of Error will also show that the allegation of want of due process of law is not sustained.

> "SEVENTH. The Supreme Court of Pennsylvania erred in dismissing the exceptions filed by the plaintiffs in error, thereby confirming the judgment of the court below."

> "EIGHTH. The Supreme Court of Pennsylvania erred in not entering judgment in favor of the plaintiffs in error and not reversing the judgment of the court below."

These are merely a reiteration of the specific assignments of error we have already considered.

We do submit that the Record shows that there is no federal question in this case. The mere allegations of such questions is not sufficient—the record must show them.

In *Wilson vs. North Carolina,* 169 U. S., 595, you said "* * * a real and not a fictitious federal question is essential to the jurisdiction of this Court over the judgments of State Courts."

Second.

Where the Question raised by the Writ of Error has already been decided by the Supreme Court, the motion to affirm will be granted, even though the Motion to Dismiss must be refused on the ground that the Court has jurisdiction.

Swope vs. Leffingwell, 105 U. S., 3.

The Court said:

"We have jurisdiction of this case. The motion to dismiss is therefore denied; but as the only Federal question presented on the merits was decided by the Court below in accordance with our rulings in *National Bank vs. Mathews* (98 U. S., 621) and *National Bank vs. Whitney* (103 id., 99), the motion to affirm is granted.

The S. C. Tryon, 105 U. S., 267.

In refusing to dismiss because the Court had jurisdiction, the Court said, page 270:

"The motion to dismiss must therefore be overruled, but on looking into the record we are satisfied the appeal was taken for delay. The only question presented arises in the findings of fact. From these it appears that the collision was due solely to the unjustifiable change of course by the schooner when the vessels were in close proximity, which baffled the steamer in the efforts to pass in safety. *It is so well settled that a*

steamer is not liable for the consequences of a collision occuring in this way, that we do not deem it proper to retain the cause for further consideration."

Walston vs. Nevin, 128 U. S., 578.

This is a case very closely in point. A law of Kentucky made provisions for opening streets, and provided certain regulations for levying assessments on the property owners to pay for such improvements. A writ of error was taken on the ground that the law was in conflict with the 14th Amendment and that the appellants were being deprived of the property without due process of law.

The Court, in affirming, used the following language in discussing the case on its merits:

"And whenever the law operates alike on all persons similarly situated equal protection cannot be said to be denied. *Wurtz vs. Hoagland,* 114 U. S., 606; *Railroad Co. vs. Richmond,* 96 U. S., 521, 529. The remedy for abuses is in the state courts, for in the language of Mr. Justice Field in *Mobile vs. Kimball* 'this court is not the harbor in which the people of a state or county can find a refuge for ill-advised, unequal and oppressive state legislation.'

"As the question raised in these cases is a Federal question (*Spencer vs. Merchant, supra*) we will not sustain the motions to dismiss; but as there was, *in our judgment, color for those motions, and the contention now made has often been pressed upon our attention be-*

fore, and as often determined adversely, so that the rule must be regarded as settled, we shall grant the motions to affirm."

The Alaska, 130 U. S., 201.

In this case a motion for dismissal was refused because the Court had jurisdiction, but the motion to affirm was allowed on the ground that the question had been settled by previous decisions of the United States Supreme Court.

The Court (page 208) said:

"But there is sufficient color for the motion to dismiss to warrant us in entertaining the motion to affirm. *Whitney vs. Cook,* 99 U. S., 607; *Hinckley vs. Morton,* 103 U. S., 764; *Micas vs. Williams,* 104 U. S., 556; *The S. C. Tryon,* 105 U. S., 267; *Independent School Dist. vs. Hall,* 106 U. S., 428; *Davies vs. Corbin,* 113 U. S., 687.

"On the merits, we are of opinion that this case is governed by the decision in the case of The Harrisburg, 119 U. S., 199, and that this appeal was taken for delay only."

"The question involved and decided in that case was, whether the admiralty courts of the United States could take cognizance of a suit to recover damages for the death of a human being on the high seas or on waters navigable from the sea, caused by negligence, in the absence of an Act of Congress or a statute of a State,

giving a right of action therefor. *That question was answered by this Court in the negative, and the decision entirely covers the present case.*"

"The motion to dismiss the appeal is denied, and the decree of the Circuit Court is affirmed."

Foster vs. Kansas, 112 U. S., 201, 206.

"As the question of the constitutionality of the statute was directly raised by the defendant, and decided against him by the Court, we have jurisdiction, and the motion to dismiss must be overruled; but, as every one of the questions which we are asked to consider has been already settled in this court, the motion to affirm is granted. In *Bartemeyer vs. Iowa,* 18 Wall., 129, it was decided that the State law prohibiting the manufacture and sale of intoxicating liquors was not repugnant to the Constitution of the United States. This was reaffirmed in *Beer Co. vs. Massachusetts,* 97 U. S., 25, and that question is now no longer open in this court. In *Ames vs. Kansas,* 111 U. S., 449, it was decided, at the last term, that the remedy by information in the nature of *quo warranto,* in Kansas, was a civil proceeding, and in *Kennard vs. Louisiana,* 92 U. S., 480, that a State statute regulating proceedings for the removal of a person from a State office was not repugnant to the Constitution of the United States if it provided for bringing the party against whom the proceeding was had into court, and notifying him of the case he had to meet, for giving him an opportunity to be heard in his defence, and for the deliberation and judgment of the court."

In *Miller vs. Cornwall R. R. Co.,* 168 U. S., 133, this Court held on a motion to dismiss or affirm that the Federal question alleged must be fairly apparent on the record.

Chanute City vs. Trader, 132 U. S., 210, 214.

This case concerned the right of the City to levy a tax to pay judgment recovered against the City on account of certain bonds issued by it. The Circuit Court below granted a mandamus requiring officers of the City to levy the tax. A writ of error was taken, and on a motion to dismiss or affirm the Court refused to dismiss, but affirmed, after discussing the merits of the case.

> "In *Swope vs. Leffingwell,* 105 U. S., 3, there was a motion to affirm united with a motion to dismiss a writ of error to a State court. The motion to dismiss was made on the ground that there was no Federal question involved. The Court held that it had jurisdiction, *but affirmed judgment on the ground that the case on the merits was governed by previous decisions.*"

See also:

***Hinckley vs. Morton,* 103 U. S., 764.**

Thomas Wooldridge, 23 Wall., 283.

Motion to Affirm.

If, however, this court should be of opinion that it has jurisdiction, then we move to affirm the order and decree of the court below, because

(a) The Federal questions attempted to be raised in this proceeding by the plaintiffs in error have been time and again decided by this court adversely to the present contention of the plaintiffs in error.

(b) The questions upon which the jurisdiction depend are so frivolous as not to need further argument.

(c) It is manifest that the writ of error in this case is taken for the purpose of delay.

(a and b) The whole contention of the plaintiffs in error may be reduced to the following heads, but they all involve, for one reason or another, but one question, and that is:

Is the Act of the State of Pennsylvania, approved February 7th, 1907, providing for the annexation of one city to another, if a majority of the people within the boundaries of the two cities so vote, constitutional?

They allege that the said Act is unconstitutional for the following reasons:

(1) Because the City of Allegheny is not given a separate vote, and that the Act permits the qualified

electors of the larger city to overpower or outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city.

(2) That it impairs the obligation of the contract existing between the City of Allegheny and your respondents by which they are to be taxed only for the government of the City of Allegheny, and for improvements, repairs and expenditures incidental to the government of said city.

(3) Because such annexation will add additional taxes to the property of the plaintiffs in error and depreciate the value of the same, and that this will be in violation of Article 5 and Article 14 of the Amendments to the Constitution of the United States.

(4) That because, as the plaintiffs in error allege, the Act of Pennsylvania was in conflict with the Constitution of Pennsylvania in that it is special legislation, and in that it was not a subject contained in the Governor's Proclamation for an Extra Session, it is therefore in conflict with the 14th Amendment to the Constitution of the United States because it is not due process of law.

Each of these reasons has been already considered and each is alike unfounded.

Let us notice them briefly:

(1) The second reason alleging a contract between the City of Allegheny and the citizens of Allegheny as to the continuity of the municipal government of Allegheny City is met by prompt denial that such a contract now or ever did exist, and by the plaintiffs in error wholly failing to show, as the record will demonstrate, that any such contract ever did exist.

(2) The third Exception that the annexation will depreciate the value of the plaintiffs' property, and will annex to it additional burdens and taxes, is met by the fact that this is also denied, and it is alleged by the City of Pittsburg that the property of the plaintiffs in error will be appreciated instead of depreciated, and that the taxes and burdens will not be so large as theretofore they were in the City of Allegheny; that under Section 8 of the Act, no property in Allegheny City will be held liable for any of the debts or liabilities of the City of Pittsburg, but that a special tax must be levied to pay the debts of the City of Pittsburg. Therefore the very foundation of the allegation that this takes from the plaintiffs their property without due process of law falls.

In addition, no property is taken from the plaintiffs in error. Each one of them holds his property as before, except that the form of municipal government under which he

lives will be changed, and instead of two cities existing within a radius of five miles of the Court House, Pittsburgh, they will hereafter be under one municipal government in which all the citizens of the old City of Allegheny and the old City of Pittsburgh will have an equal right.

These very questions now sought to be insisted upon have been considered time and again by this court, and especially in the case of *Kelly vs. City of Pittsburg,* 104 U. S., 78, and decided adversely to the plaintiffs in error.

(3) The idea that there can be a Federal question here, because, as the plaintiffs in error allege, the Act of Pennsylvania for the annexation is in violation of the State Constitution in that it was special legislation, and in that it was not a subject mentioned in the call of the Governor for an Extra Session, depends upon, as heretofore stated, two propositions:

(a) That as a fact the Pennsylvania State Act does violate the Constitution of Pennsylvania.

(b) That because it does, therefore annexation has not been decreed by due process of law.

But the Supreme Court of Pennsylvania by unanimous decision, printed at length in our appendix, holds that the State Act is not in violation of any provision of the State Constitution, and that the Act is constitutional.

This decision of the Court of last resort in Pennsylvania on the State question is authoritative in this court.

In *Miller vs. R. R. Co.*, 168 U. S., 134, you said:

> "We have no jurisdiction on a writ of error to a State Court to declare a law void on account of its collision with a State Constitution."

The idea that the provision for due process of law has been violated in the present proceeding, and that therefore this court should interfere, is met by the decision of the Supreme Court of Pennsylvania in the appendix, and is especially overruled in the United States cases we have heretofore cited to the effect that if the proceedings are under an Act of the Legislature of the State and are conducted through the State Courts in conformity with the pleadings and practice of those courts, and they relate solely to the forms of municipal governments or the changes in the forms, or the revocation of municipal charters or the annexation of additional territory to the municipality, and the State Court holds that under the State law the proceedings are regular and proper, this is due process of law, and there is no infringement of the 14th Amendment thereby.

See authorities *ante*.

This leaves but one single question, which is really at the basis of all the assignments of error, and that is, whether the fact that this Act provided for the consolidation of the two cities by a majority vote of all the people of the two cities, and neither the City of Allegheny nor the City of Pittsburg was given a separate vote, makes the Act unconstitutional.

Why should it make the Act unconstitutional?

Certainly it does not, unless it can be proved that the charter of Allegheny City from the State of Pennsylvania was such that the State of Pennsylvania could not revoke or change or alter it without the consent of its citizens.

Even the plaintiffs in error have failed to make such an allegation. The authorities in Pennsylvania are full to the effect that the State may revoke the charter of any borough, city or county or change its boundaries or annex land to it, or take land from it, or annex it to other boroughs or cities, and it has been the constant practice so to do ever since the formation of the State. This will be fully seen if the opinion of the Supreme Court of Pennsylvania is read. It is most abundantly sustained by the opinion of that Court in the case of *Commonwealth vs Moir*, 199 Pa. St., wherein the Supreme Court of the State (p. 541) said:

> "Municipal corporations are agents of the State, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined by the Legislature, and subject to change, repeal or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no State has it been more clearly expressed and more uniformly applied than in Pennsylvania. In *Philadelphia vs. Fox*, 64 Pa., 180-81, this court, speaking through Sharswood, J., said: 'The City of Philadelphia is a municipal corporation, that is a public corporation created by the government for political purposes, and having subordinate and local powers of legislation. * * * It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government, essentially a revocable agency, having no vested

right to any of its powers or franchises, the charter or act of erection being in no sense a contract with the State, and, therefore, fully subject to the control of the Legislature, who may enlarge or diminish its territorial extent or its franchises, may change or modify its internal arrangements or destroy its very existence with the mere breath of arbitrary discretion.' "

If this is so, what right has any citizen of either of the old cities to any vote whatever on the question whether one city shall be annexed to another?

If the legislative power may annex one city to another without consulting the people at all, how is it unconstitutional to submit the question to a majority of the votes within the boundaries of the two cities?

The question itself is *legislative* purely, and not judicial. It is for the legislature to determine the terms upon which annexation or consolidation may be accomplished.

See the opinion of the Supreme Court of Pennsylvania in the appendix.

Authorities and Decisions.

It is hardly overstating the proposition to say that this court has considered and discussed this question and at considerable length in at least twenty cases. We have hereinbefore quoted at length from the cases of

Mt. Pleasant vs. Beckwith, 100 U. S., 514;

Laramie County vs. Albany County, 92 U. S., 307;

Covington vs. Kentucky, 173 U. S., 231;

Attorney General of the State of Michigan vs. Lowery, 199 U. S., 233;

Worcester vs. Worcester Street Railway Co., 196 U. S., 539;

Meriwether vs. Garrett, 102 U. S., 472;

Kelly vs. Pittsburgh, 104 U. S., 78.

In *Sutherland's Notes on the Constitution of the United States,* page 309, he considers the decisions of this court and he states the following conclusions:

That the charters of counties, towns and cities are not contracts, and the legislature has unlimited control to alter, annul or repeal them:

A municipal corporation is a mere creature of the legislature, established for the purposes of government and entirely subject to the legislative will, which may revoke or change

or alter or consolidate or annex one to another, or increase or lessen the territorial limits.

Dillon on Municipal Corporations, after an elaborate citation of authorities, Volume I, Section 185, Fourth Edition, says:

> "Not only may the legislature fix the limits of the corporation, but it may, unless especially restrained in the constitution, subsequently annex or authorize the annexation of contiguous or other territory, and this without the consent and even against the remonstrance of the majority of the persons residing in the corporation or on the annexed territory. And it is no constitutional objection to compulsory annexation that the property thus brought within the corporate limits will be subject to taxation to discharge a pre-existing municipal indebtedness."

In *Cooley's Constitutional Limitations,* 7th Edition, p. 266, he stated the doctrine:

> "that the Legislature * * * has authority to amend their charters, enlarge or diminish their powers, extend the limit of their boundaries, consolidate two or more into one, overrule their legislative action whenever it is unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion, and substitute those which are different. The rights and franchises

of such a corporation being granted for the purposes of government, can never become such vested rights as against the state that they cannot be taken away. Nor does the charter constitute a contract in the sense of the constitutional provision which prohibits the obligation of contracts being violated."

This court in *Mt. Pleasant vs. Beckwith,* 100 U. S., in reference to municipal corporations, like cities, said on page 524:

> *"That the powers of the organization may be modified or taken away at the mere will of the legislature, according to its own views of public convenience, and without any necessity for the consent of those composing the body politic."*

Again on page 529, quoting from Mr. Justice Field, you said:

> "Modifications of their boundaries may be made or their names may be changed or one may be merged in another or it may be divided, and the moities of their territories may be annexed to others."

Again on page 531 you said:

> *"The power exists in the legislature, not only to fix the boundaries of such municipality when incorporated, but to enlarge or diminish the same subsequently, without the consent of the residents by annexation or set-off, unless restrained by the constitution, even against the remonstrance of every property holder and voter within the limits of the original municipality.* * * * Nor is it any objection to the exercise of the power that the property annexed or set-off will be subject to increased taxation."

In *Laramie County vs. Albany County*, 92 U. S., 307, on page 310, you ruled as to these governments of municipal corporations:

> *"And it may be modified or taken away at the mere will of the Legislature according to its own views of public convenience, and without any necessity for the consent of those composing the body politic."*

In *Covington vs. Kentucky*, 173 U. S., 231, this court said, page 241, that a municipal corporation

> "stands in its governmental or public character in no contract relation with its sovereign at whose pleasure its charter may be granted, changed or revoked without the impairment of any constitutional obligation. * * *"

In *Attorney General of the State of Michigan vs. Lowery*, 199 U. S., 233, at page 240 you said that these governments are the auxiliaries of the state, and have no pretension to continuity of existence:

> "Instead of that, the constant practice is to divide large counties, and towns, and to consolidate small ones to meet the wishes of the residents or to promote the

public interests as understood by those who control the action of the legislature."

In *Worcester vs. Worcester Street Railway Company,* 196 U. S., 539, you said:

"A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department. * * * As is stated in *United States vs. Baltimore & Ohio Railroad Company,* 17th Wallace, 322, 329, a municipal corporation is not only a part of the state, but is a portion of its governmental power. It is one of its creatures made for a specific purpose, to exercise within a limited sphere the powers of the state. The state may withdraw these local powers of government at pleasure, and may, through its legislative or other channels, govern the local territory as it governs the state at large. It may enlarge or contract its powers or destroy its existence."

You said that this might be done

"without any necessity for the consent of those composing the body politic."

And you again said in the same case

"without the impairment of any constitutional obligations."

In *Meriwether vs. Garrett,* 102 U. S., 472, you said:

"All persons who deal with such bodies are conclusively presumed to act upon knowledge of the power

of the legislature. There is no such thing as a vested right held by any individual in the grant of legislative power to them."

In *Kelly vs. City of Pittsburgh,* 104 U. S., 78, you said (p. 80):

"It is not denied that the Legislature could rightfully enlarge the boundary of the City of Pittsburgh so as to include the land. If this power were denied, we are unable to see how such denial could be sustained. What portion of a state shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. How thickly or how sparsely the territory within a city must be settled is one of the matters within the legislative discretion. Whether territory shall be governed for local purposes by a county, a city or township organization is one of the usual and most ordinary subjects of state legislation."

(c) This writ of error is taken solely for the purpose of delay.

The record shows that the petition for the annexation of Allegheny to Pittsburgh was presented at No. 71 December Sessions, 1905, in the Court of Quarter Sessions of Allegheny County, on February 17th, 1906.

These plaintiffs in error filed exceptions to that petition, which were heard in March, 1906, were dismissed on April 25th, 1906, and on April 30th, 1906, the Court ordered that an election be held under the terms of the Act on June 12th, 1906, to vote for or against consolidation.

June 16th, 1906, the return judges certified to the Court of Quarter Sessions a vote cast in favor of and against consolidation, and that the majority was 20,151 in favor of consolidation.

June 16th, 1906, the Court of Quarter Sessions made a decree annexing the City of Allegheny to the City of Pittsburgh.

Exceptions were filed to the decree and an order was made June 16th, 1906, allowing an appeal, and a bond was given operating as a supersedeas, in the sum of $1,000.00, the appeal being to the Superior Court of the State.

That court heard the appeal on October 9th, 1906, and decided the same November 19th, 1906, affirming the decree of the Court below.

An appeal was then taken to the Supreme Court of the State and that Court heard the argument on January 7th, 1907, and handed down an opinion on March 11, 1907, affirming the decree of the Superior Court.

Under the practice in Pennsylvania the record does not go down until ten days after the opinion is handed down, and this application was made on a petition to Mr. Justice Moody and apparently without a copy of the record or a copy of the opinion of the Supreme Court, but apparently upon a petition and without notice to the City of Pittsburg, or either of its counsel.

That petition set forth the passage of the Act, the hearing in the Court of Quarter Sessions, and, among other things, averred that the plaintiffs in error had filed in the Court of Quarter Sessions exceptions to the proceedings, setting up, among other things, that said proceedings were in conflict with the federal constitution because of the impairment of the obligation of the contract between the City of Allegheny and the plaintiffs in error, by which they were to be taxed only for the government of the City of Allegheny for improvements, repairs and expenses incidental to the government of the City of Allegheny: that the annexation of the City of Allegheny to the City of Pittsburgh would deprive the plaintiffs in error of their property without due process of law, but did not call the attention of the Court to the fact that all these averments to the effect that the plainiffs would be deprived of their property without due process of law that their property would be depreciated in value; that a contract existed between the City of Allegheny and plaintiffs in error; that they were not to be taxed except for the government of the City of Allegheny, etc., were all denied as questions of fact by the City of Pittsburgh in the original proceedings in the Court of Quarter Sessions of Allegheny County.

The petition on its face did not explain how this contract was made, nor how the plaintiffs in error were deprived of their property; nor explain the method in which such allegations were attempted to be sustained.

The petition alleged that all of the federal questions now sought to be raised were considered in the opinion of Justice Brown of the Supreme Court of Pennsylvania; whereas, it will be noticed that the Fifth and Sixth assignments of error as to the said act being in conflict with the Constitution of Pennsylvania and therefore not due process of law under

the 14th Amendment, were not raised in the said Courts of Pennsylvania.

The petition further prayed that the writ of error be made a supersedeas and that your Honors will further grant the plaintiffs in error a reasonable time in which to present in this court a transcript of the records of this case which, when presented shall be filed *nunc pro tunc* as if filed with this petition.

The plaintiffs in error have persistently continued this litigation in the way most calculated to protract it. They did not, as they might have done, and indeed as was done by the City of Allegheny in the case of *Sample vs. the City of Pittsburgh,* 212 Pa., 537, file a Bill in the Supreme Court of the state to test the constitutionality of the act, and thus have the question speedily decided.

Each time an appeal has been taken a supersedeas has been granted, and the result is that although the decree for consolidation was made by the Court of Quarter Sessions of Allegheny County on June 16, 1906, the constant appeals and delays have held up the annexation which the great majority of the people desire. In the meanwhile the two city governments and the situation are quite uncertain. Numerous ordinances are pending, or have been passed in the City of Allegheny since June 16, 1906, among which is one for the issuing of $1,000,000 of bonds, and others are for the grant of municipal grants to different corporations.

The affairs of the City of Pittsburgh are held up and public improvements are delayed because of the uncertainty of the status of the city under the annexation, and the inability of the city at the present, until the question is finally decided, to proceed with much needed improvements.

It seems incredible that there could be any substantial doubt upon the questions raised in this case and which this Court is asked to consider. All the text books, the decisions of this Court, and really all the decisions of all the Courts of last resort of which we had a knowledge in the United States, affirm the constitutionality of the present proceeding for the annexation of the City of Allegheny to Pittsburgh. To longer tie this up and prevent that annexation is to keep two cities in a chaotic condition and to postpone for at least six months the hearing and decision of this present case very much to the injury of both of the cities in a manner for which there could be no adequate recovery on the bond.

If as you ruled in *Miller vs. Cornwall R. R. Co.*, 168 U. S., 133, the federal question must be *fairly* raised and fairly open to question, and if as you ruled in *Wilson vs. North Carolina*, 169 U. S., 595, that the federal question meant a *real* one,

"A real and not a fictitious"

one, and if as our citations show, *all* the alleged federal questions have been decided over and over again against the present contentions, then certainly the decree of the Supreme Court of Pennsylvania should be affirmed on this motion.

> *Toney vs. Mayor and Council of Macon*, 195 U. S. 625.

This is a case exactly in point where the same questions as are in the case at bar were carried into the Supreme Court of the United States from the Supreme Court of Georgia and the writ of error was dismissed on motion to dismiss or affirm, that there was no jurisdiction.

See the case reported in 119 Ga. 83. In this case there were methods by which the City of Macon could enlarge its boundaries with the consent of the people of the territory annexed; a special act was passed enlarging the boundaries of the City of Macon without the consent of the people of the territory annexed. An injunction was asked restraining the Mayor and Council from exercising any powers and under the Act, alleging

(1) That the Act was void because by other methods the City could be enlarged with the consent of the people of the territory annexed.

(2) Because the people of the annexed territory would be subject to taxation without representation in violation of the 14th amendment.

(3) Because the inhabitants of the territory so annexed would be compelled to help pay the bonded indebtedness of the city, in the making of which they had no voice.

The Supreme Court of Georgia held that the act was constitutional and a writ of error was taken to the Supreme Court of the United States, where it was dismissed on motion to dismiss or affirm.

W. B. Rodgers,
City Solicitor.

D. T. Watson,
For the Motion.

APPENDIX.

Opinion of Supreme Court.

The Supreme Court's decision, in full, follows:

November 11, 1905, the Governor of the State called the General Assembly into extraordinary session, to meet January 15, 1906, for the consideration of legislation upon seven subjects mentioned in his proclamation. The first was "to enable contiguous cities in the same counties to be united in one municipality in order that the people may avoid the unnecessary burdens of maintaining separate city governments."

January 9, 1906, he issued what he regarded as a second proclamation, for he entitles it a "proclamation." In it, after calling attention to the approaching extraordinary session, he designated additional subjects for consideration of the General Assembly at said session, one of them being to "enable cities that are now or may hereafter be contiguous or in close proximity, including any intervening land, to be united in one municipality, in order that the people may avoid unnecessary burdens of maintaining separate municipal governments. This fourth subject is a modification of the first subject in the original call and is added in order that legislation may be enacted under either of them, as may be deemed wise."

The extraordinary session was held, and at it there was issued, among other bills, the one now under consideration, approved February 7, 1906. It is entitled "An act to enable cities that are now, or may hereafter be, contiguous or in close

proximity, to be united with any intervening land other than boroughs in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories and the enforcement of debts and claims due to or from each."

The first section is as follows: "That wherever in this Commonwealth, now or hereafter, two cities shall be contiguous or in close proximity to each other, the two, with any intervening land other than boroughs, may be united and become one by annexing and consolidating the lesser city, and the intervening land other than boroughs, if any, with the greater city, and thus making one consolidated city, if at an election, to be held as hereinafter provided, there shall be a majority of all the votes cast in favor of such union."

The question of the consolidation of the cities of Pittsburg and Allegheny was submitted to their lawful voters at an election held in pursuance of the provisions of the act, the result being a majority of 20,154 in favor of consolidation out of a total vote in the two cities of 55,574. Following this election the Court of Quarter Sessions of Allegheny County, on June 16, 1906, "ordered, adjudged and decreed that the city of Allegheny, the lesser city, be annexed to and consolidated with the city of Pittsburg, the greater or larger city, so that they form but one city and in the name of the city of Pittsburg."

From this decree an appeal was taken to the Superior Court. That court affirmed it, *Pittsburg's petition,* 32 Sup. Ct., 210, and from the decree of the Superior Court we have this appeal, raising the question of the constitutionality of the act of 1906.

One of the objections of the appellants to the constitutionality of the act is that it is not legislation upon a subject

designated in the proclamation of the Governor calling the special session. This objection is based upon Article III., Section No. 25, of the Constitution, which provides that "when the General Assembly shall be convened in special session there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session."

In the original proclamation the legislation to be considered by the General Assembly on the subject of the consolidation of cities was confined to contiguous cities in the same county, and it may be well contended that, as the mandate of the Constitution is imperative that the Legislature, at the special session, shall pass no law upon any subject not designated in the call, the act is technically without it. The act is not for the consolidation of two contiguous cities, situated in the same county, but for that of any two, contiguous or in close proximity, wherever situated. They may be in different counties. We need not, however, pass upon the sufficiency of the first proclamation to sustain the act as being one of the subjects of legislation designated in it.

Whether the General Assembly ought to be called together in extraordinary sessions is always a matter for the Executive alone. How it shall be called, and what notice of the call is to be given, are also for him alone. The Constitution is silent as to these matters, and wisely so, for emergencies may arise, such as riots, insurrections, widespread epidemics or general calamities of any kind, requiring the instant convening of the Legislature, and, in the power given to the Governor to call it no time for the notice is too short if it can reach the members of the General Assembly, and with telephones and telegraphs the uttermost portions of the Commonwealth can at any time be reached between the rising and the setting of the sun.

In this connection it may be noted as significant that the Governor is not even required by Article 4, Section 12, empowering him to call the General Assembly together in extraordinary session, to do so by a proclamation, though the same section does provide that in calling the Senate in extra session for the transaction of executive business he must do so by proclamation. A proclamation, however, is the proper mode of calling the Legislature together, and the Constitution seems to so contemplate, for Section 25, Article 3, speaks of "The proclamation," but no form of proclamation is to be followed, and if, after one has been issued, it occurs to the executive that other subjects than those designated in it should be passed upon by the Legislature, he can unquestionably issue another, fixing the same time for the meeting of the General Assembly as was fixed in the first and designate other subjects for its consideration.

This is, perhaps, what ought to be done when other subjects than those designated in the proclamation are to be brought to the attention of the Legislature in special session, and if it had been done in the present case the objection of the appellants now under consideration would hardly have been raised.

This, however, is not for the judiciary, but for the Governor alone. The proclamation of January 9 is in effect a second proclamation. In it the Governor adopts his original call for the purpose of fixing the time of the meeting of the General Assembly, and then proceeds to designate the additional subjects of legislation.

With every presumption in favor of compliance by the executive with the constitutional requirements relating to his calling the General Assembly together in extraordinary session, it would be judicial hypercriticism to declare his second notice or proclamation insufficient to authorize the Legislature to pass the act under consideration.

The objection most strenuously urged against the act is that it violates Article 3, Section 7, of the Constitution, which prohibits the Legislature from passing any local or special law regulating the affairs of cities. Is the act local or special, or is it general in its provisions? It provides for the consolidation of two cities of no particular class, but of any two cities belonging to the same or different classes wherever situated and whether in the same or in different counties.

Whether two cities ought to be consolidated is purely a legislative question, and the general act providing for their consolidation is not forbidden legislation.

The power of the Legislature to provide for the annexation of cities is not limited by the Constitution. What it may not now do is to regulate, by a local or special law, the affairs of cities. In providing for the annexation of any two cities of the Commonwealth there is no regulation of the affairs of any two particular cities.

The provision is simply for such annexation, if certain mutual and what may be regarded as necessary conditions exist. The Legislature might, without transgressing the Constitution, have provided for the consolidation of cities without regard to the distance between them, absorbing in their consolidation all the intervening space, whether occupied by boroughs or townships.

But such legislation is not conceivable, for the common sense of the people would not tolerate it. In providing for annexation in the act of 1906 the Legislature restrained its power to authorize consolidation in declaring that certain natural, reasonable and necessary conditions must exist if two cities are to be united. No arbitrary, unnecessary conditions are prescribed; only reasonable ones are ordered. The Legislature might have limited the right to consolidate two con-

tiguous cities, but it extended this right to those in close proximity. While it is purely a legislative matter to determine what cities may be consolidated, it is a matter that only those ought to be which are contiguous or in close proximity; and, in making contiguity or close proximity a condition of the right to consolidate the affairs of no special city are regulated.

By the act any two cities contiguous or in close proximity may become one. No two contiguous cities are excluded from its provisions, and any two in close proximity may be united, provided that by their union they do not absorb and swallow up an intervening borough. The act does not prevent the consolidation of cities in close proximity between which there may be a borough, if that borough does not embrace all the land between them, or does not extend as a wedge throughout the entire length of the same. If a borough occupies all the land between two cities they cannot be united without absorbing such borough. They touch at no point, are not contiguous, and are not in close proximity within the meaning of the act.

But if the land between two cities in close proximity is not wholly occupied by a borough, or a borough does not extend throughout the entire length as a wedge in such intervening land, and there is township land connecting the cities at any point or points, they can be consolidated under the act, the township land becoming a part of the new city and the borough retaining its municipal existence. The act is, therefore, one, and must be so read, permitting the consolidation of any two cities contiguous or in close proximity, of whatever class and wherever situated, provided only that in such consolidation the separate existence of an intervening borough shall not be destroyed.

If a borough occupies all of the space between them they are not contiguous, and, though in close proximity, they can-

not physically unite without wiping out the borough. But if a borough should not be all of the intervening land they can unite by absorbing that land which the borough does not occupy—the intervening land beyond the borough limits—leaving it to continue its independent municipal life.

At this point it may be well to call attention to the clear line of demarcation between this act and that of April 20, 1905, P. L. 221, known as the Cook Law, and declared to be unconstitutional in *Sample vs. Pittsburg,* 212 Pa., 533. It provided for the annexation of a smaller to a larger city when the two were contiguous and situated in the same county, and for the purposes of the act it was declared that "cities separated by a stream, river or highway shall be included under the term contiguous."

So clearly was it bald, special local legislation that it might well have been labeled an act for the consolidation of the cities of Pittsburg and Allegheny. In forceful language our brother Mestrezat demonstrated the act to be local and special ,and we quote at length from his opinion, for the converse of what he says of it is true of the act of 1906: "The title of the act clearly indicates the subject of the enacting part and discloses the local and special features of the statute. It shows that the act was not intended to apply to any two cities of the State so as to make it general in its operation, but conditions are imposed which restrict its application to certain cities, thereby depriving the other cities of the State of the benefit of its provisions. The statute is operative 'where two cities are contiguous and in the same county.' Its provisions can be invoked to annex only two cities and when they are thus situated. Two cities of this description may be annexed to each other and all others are excluded from the operation of the statute."

As we take judicial cognizance of the municipal divisions of the State, as well as of their location, we know, as

averred in the bill and not denied in the answer, that the cities of Allegheny and Pittsburg, in Allegheny county, are the only two contiguous cities in the State and that there are no two contiguous cities in any other county in the State. The act, therefore, is limited in its operation of these two cities and the effect or result of the legislation is the same, and the act as clearly special as if the names of the two cities had been written in the statute instead of the peripharse used in the description of the cities subject to its operation.

The identification of the two cities intended to be affected by the act is also aided by the provision of the statute that "for purposes of this act cities separated by a stream, river or highways shall be included under the term contiguous." Aside from the contention that the act applies only to cities seperated by a stream, river or highway this clause of the act clearly suggests the two Allegheny county cities as the cities subject to its operation.

We judicially know that Pittsburg and Allegheny are the only two cities in the Commonwealth separated by a stream or highway, and the fear that that fact would render those cities not contiguous within the meaning of the statute moved the promoters of this legislation to further identify them by inserting this clause in the act. This feature should not and cannot be ignored when the Court is called upon to test the constitutionality of the statute as it clearly earmarks the legislation as local and special.

There is no merit in the contention that at some time in the future there may be two other cities which may become contiguous and in that event can be consolidated under the provisions of the act.

With a knowledge of the facts, known to the Legislature as well as to the Court, this is not within the range of probability, but a possibility so remote that it must be excluded

from consideration in determining the constitutionality of the statute. It could only occur if a community adjacent to any of the cities of the State should become sufficiently populous to enable it to become a city and should take the necessary legel steps to make itself a city and subject to the operation of the act, or if the boroughs lying between and connecting certain cities of the State should, by the requisite legal proceedings, be annexed to those cities or form themselves into a city and thereby connect two existing cities so as to make the act operative. These are simply contingencies within the realm of speculation and entirely too remote to support legislation otherwise repugnant to the constitutional mandate.

The statute requires any two cities desirous of availing themselves of its provisions to be located in the same county. This confines the act in its operation to cities within certain territorial limits and brings it within the domain of special legislation, prohibited by the Constitution. The act does not attempt to classify cities on any basis whatever. It provides simply that it shall operate upon two cities situate in the same county. It, therefore, excludes from its provisions and denies its privileges to all cities separated by a county line, or which are not wholly within the same county, although occupying contiguous territory.

All cities whose boundaries are coterminus with the county line are perpetually excluded from the operation of the statute, although other cities may adjoin them at different parts of their boundaries. This distinction made in the act between the cities of the Commonwealth is not based upon necessity nor upon any grounds which the law recognizes as justifying classification. Its effect is to restrict the operation of the statute to two cities located in the same territorial division of the State; and when considered in the light of the conceded facts it fixes with unmistakable certainty the two cities to be consolidated under its provision.

A clearer or more palpable attempt to evade the constitutional prohibition against special and local legislation is not disclosed in any of the numerous bills introduced in the General Assembly since the adoption of the present Constitution, not excepting the statute which Justice Paxson in *Commonwealth vs. Patton,* 88 Pa., 258, very properly characterized as "classification run mad."

But what of this act? Its operation is not confined "to cities within certain territorial limits." It is general in its terms and refers to no classes of cities, but to all cities. It does not provide that it shall operate only "upon two cities situated in the same county." It does not exclude "from its provisions and deny its privileges to all cities separated by a county line, or which are not wholly within the same county," but extends them to any two cities within the Commonwealth having natural, reasonable and necessary conditions of consolidation.

Counsel on both sides of this controversy have cited many cases on the classification of cities. By the appellant we are referred to them as requiring us to declare the act local and special, regulating the affairs of cities, and for the appellee they are cited to sustain it; but as classification is not involved in the act we need not consider the cases on that subject. That it applies now, and for the present can apply, only to the cities of Pittsburg and Allegheny, and that it was passed for them, can make no difference if the legislation is general in form and substance and is not within the prohibition of the Constitution. *Wheeler vs. Philadelphia,* 77 Pa., 338. Individual needs and requirements are responsible for much legislation which now must be general, and, when it is so, the causes that lead to it, or the particular purposes it is to serve at the time of its enactment, have nothing to do with its constitutionality.

It may meet at the time of its passage the wants of but one community, but if in the future it will meet those same

wants in all other communities, the legislation is as general as if at the time of its passage there had been no special reason calling for it.

The method of consolidation is said to be unconstitutional because it is not by "due process of law, in that it permits electors of the larger city to overpower or outnumber those of the lesser city and to annex the lesser city without the vote or consent of majority of the qualified voters or electors of the lesser city."

This is completely answered in the following extract from the opinion of the learned Judge speaking for the Superior Court:

"In determining whether this act is contrary to that 'due process of law' guaranteed by the Federal Constitution in providing that the electors of the consolidated territory shall determine the question of annexation of the lesser city, instead of permitting the majority of the electors of lesser city to decide it, we have many adjudicated cases which warrant the action taken by the Legislature. The words 'due process of law,' as taken from Magna Charta and incorporated in the Constitution, were intended to secure the individual from the arbitrary exercise of the powers of government unrestrained by the established principle of private rights and distributive justice.

"In each particular case the words mean: Such an exercise of the powers of government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. *Coley's Constitutional Limitations*, 434. The people of the municipalities do not define for themselves their own rights, privileges and powers, nor is there any common law which draws a definite line of distinction between the powers which may be

exercised by the State and those which may be left to the local government. *2 Kent's Commentaries,* 278-279. The general principle is that when the State is acting in its sovereign capacity it acts for the whole Commonwealth and private rights and interests must yield to this paramount object.

"Private rights may be and very frequently are interfered with by either the legislative, executive or judicial departments of the Government, and the creation of municipal corporations and the conferring upon them of certain powers and subjecting them to corresponding duties does not deprive the Legislature of the State of that general control over their citizens which they before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one and overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion and substitute those which are different.—*Cooley's Constitutional Limitations,* 228.

Restraints on the legislative power of control must be found in the condition of the State or they must rest alone in the legislative discretion. If the legislative action operates injuriously to the municipalities or to individuals, the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to to right through ballot box all these wrings.—*Erwine's appeal,* 16 Pa., 256; *Cooley's Constitutional Limitations,* 228, 299, 230.

The act in question has been passed with all the forms and ceremonies requisite to make it a valid statute. The Legislature was properly convened and kept well within its powers in regulating the affairs of cities by a general law in accord with the requirements of the Constitution.

It follows, under the law of the land, that neither the municipality as such nor any of the persons residing therein have any vested rights in the municipal powers as against

the State which created the municipality. It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—subject to legislative control which may destroy its very existence with the mere breath of arbitrary decision. —*Philadelphia vs. Fox*, 64 Pa., 169.

Authorities everywhere support the foregoing. In our own cases may be found the following: "The City of Philadelphia is, beyond all question, a municipal corporation—that is, a public corporation created by the Government for political purposes and having subordinate and local powers of legislation: *2 Kents Com.* 275; an incorporation of persons, inhabitants of a particular place or connected with a particular district, enabling them to conduct its local civil government.—*Glover Mun. Corp.* 1.

"It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—having no vested right to any of its powers or franchises—the charter or power of erection being in no wise a contract with the State, and therefore full insubordinate to the control of the Legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangements, or destroy its very existence with the mere breath of arbritrary decision.

"*Sic volo, sic jubeo,* that is all the sovereign authority need say. This much is undeniable and has not been denied—the sovereign may continue its corporate existence and yet assume and resume the appointments of all its officers and agents into its own hands, for the power which can create and destroy can modify and change."—*Sharswood, J., in Philadelphia vs. Fox*, 64 Pa., 169. "Municipal corporations are agents of the State invested with certain subordinate governmental functions for reasons of convenience and public

policy. They are created, governed and the extent of their powers determined by the Legislature and subject to change, repeal or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers or even their corporate expense. This is the unusual rule of constitutional law, and in no State has it been more clearly expressed and more uniformly placed than in Pennsylvania. The fact that the action of the State toward its municipal agents may be unwise, unjust, oppressive or violative of the natural or political rights of their citizens is not one which can be made the basis of action by the judiciary."—*Commonwealth vs. Moir,* 199 Pa. 534.

Finally in a supplemental brief for appellant they contend that the tenth section of the act, which will have the effect of extending the term of Councilmen in the city of Allegheny violates Article 3, Section 13, of the Constitution, which provides that no law shall extend the term of any public officer. This objection does not seem to be seriously pressed and as to it we need only to repeat what was said in *Commonwealth vs. Moir, supra*: "The substitution of a new system for one under which government has been previously carried on is always accompanied with some shifting of offices and duties and some inconveniences. To reduce this to a minimum by temporary adjustment of the changes is the province of a schedule. In well considered legislation which involves such changes a schedule of temporary expedients is usually and properly added and the expedients provided would need to be very clearly unconstitutional to justify a court in overturning them."

In *Lloyd vs. Smith,* 176 Pa., 213, it is said: "In an exchange of offices there may naturally be some overlapping of terms and duties, and if in the legislative view the need for a Controller was immediate, but the existing terms of the Auditors prevented his present assumption of all the

duties that would finally pertain to his office it would not have been unwise, certainly not unconstitutional, to meet the case by a temporary expedient."

The assignments of error are all dismissed and the decree of the Superior Court is affirmed at appellant's costs.

FILED.
APR 15 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

No. 264. OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH, Defendant in Error.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

Affidavit of James Brown, Comptroller of City of Allegheny, in Opposition to the Affidavit of George W. Guthrie, Mayor of the City of Pittsburgh.

JOHN G. JOHNSON,
WILLIAM A. STONE,
Attorneys for Plaintiffs in Error.

Smith Bros. Co. Inc., Franklin Print, 412 Grant Street, Pittsburgh.

IN THE

Supreme Court of the United States.

No. 670 OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH, Defendant in Error.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

Affidavit of James Brown, Comptroller of City of Allegheny, in Opposition to the Affidavit of George W. Guthrie, Mayor of the City of Pittsburgh.

James Brown, Comptroller of the City of Allegheny, being duly sworn says: That he protests against the affidavit of George W. Guthrie, Mayor of the City of Pittsburgh. The issue in the present case is whether the Act of Assembly in controversy is in conflict with the Constitution of the United States, and the question of the advisability of the consolidation is not a question at issue.

First. That it appears from the records in the case that the conflict of the Act of Assembly in question with the Constitution of the United States was fully presented in the Court of Quarter Sessions of Allegheny County by exceptions and brief of counsel who appeared for the plaintiffs in error.

Second. That while it is true that a majority of the two cities voted in favor of consolidation, yet in the City of Allegheny the majority against consolidation was nearly two to one, as the transcript of the record shows.

Third. While George W. Guthrie states in his affidavit that the filtration plant now being erected by the City of Pittsburgh can be readily extended to afford filtered water to the City of Alelgheny, yet he does not state what that extension will cost, and it is believed by your affiant that to extend the filtration plant now being erected for the City of Pittsburgh, sufficiently to afford filtered water for the City of Allegheny, would cost more than one million dollars which the people of Allegheny have voted for the extension and improvement of their water plant.

Fourth. Affiant is now and has been for thirty-five years, Comptroller of the City of Allegheny, and as such Comptroller is quite familiar with the history of Allegheny and the history of her sister city, Pittsburgh, and that the various improvements contemplated in the City of Pittsburgh, with the expensive government of that city owing to its hilly character, would increase the burden of the tax payers of the City of Allegheny, if annexed to Pittsburgh.

Fifth. While it is true that the tax millage in Pittsburgh is 12 1/2 mills, and in Allegheny, 17 8/10 mills, this year, yet that does not impose a greater taxation on the people of Allegheny than on the people of Pittsburgh, because

they have increased in Pittsburgh, the valuation of the real estate largely which has reduced the millage, and so large has been the increase of the valuation by the assessors, in Pittsburgh, that in many cases, it is believed that the property is valued far more than it could be sold for, and in the opinion of your affiant, if the valuation of property in the City of Allegheny should be increased in proportion to the increase in Pittsburgh in the last few years, the millage in Allegheny would be less than it now is in Pittsburgh.

Sixth. While at the present valuation of property in Allegheny, the bond issue now contemplated will perhaps bring the City near to the limit of its constitutional power to increase the debt, yet that could be overcome as the City of Pittsburgh has overcome it, by increasing the valuation of its property to unreasonable and unjustifiable amounts.

Seventh. The City of Allegheny has a great deal of real estate and personal property of various kinds, in its own name, within its borders. The people of Allegheny are opposed to consolidation with Pittsburgh, nearly or quite two to one. It has been an issue for many years, and there is no physical reason why Allegheny should be annexed to Pittsburgh. There is no practical reason why annexation should be immediate, nor is there anything to justify hasty action. The case should be argued fully and at length, orally in court. There is no intention, so far as your affiant knows, to needlessly delay the decision of the case.

The above facts are true to the best of your affiant's knowledge and belief.

.....

Sworn and subscribed before me
this..... day of April, 1907.

Office Supreme Court, U. S.
FILED.
APR 15 1907
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

264.

No. [redacted] OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

AFFIDAVIT OF GEORGE W. GUTHRIE, MAYOR OF THE CITY OF PITTSBURGH.

W. B. RODGERS,
Solicitor for Defendant in Error.

Smith Bros. Co. Inc., Franklin Print. 412 Grant Street, Pittsburgh

IN THE

Supreme Court of the United States.

No. 670 OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

Affidavit of George W. Guthrie, Mayor of the City of Pittsburgh.

George W. Guthrie, Mayor of the City of Pittsburgh, being duly sworn, says, The Cities of Pittsburgh and Allegheny, the consolidation of which is involved in this proceeding, are both cities of the Second Class under the classification fixed by the laws of Pennsylvania, and are both gov-

erned by the general laws of the state applicable to that class. The two cities lie upon either bank of the Allegheny river, which river is crossed by numerous foot and vehicle bridges and the boundary line of each city is the middle of the stream.

According to the census of 1900 Pittsburgh was the tenth in population of American cities with a population of 321,616, and Allegheny City was the twenty-seventh with a population of 129,869. In the Federal Census Bureau estimates of population for 1906 these totals are raised to 375,082 and 145,240 respectively, or a total of 520,322, which would place the consolidated city in the sixth place. Since that time there has been a natural increase in population in both cities, and in addition, by reason of the annexation of several Boroughs and one Township there has been added to the City of Pitttsburgh probably 20,000 additional population.

The Act of Assembly under which this proceeding was instituted was approved by the Governor of Pennsylvania on February 7th, 1906, and was passed at an Extraordinary Session of the General Assembly of Pennsylvania, which Extraordinary Session was specially called by the Governor by proclamation, in order, among other subjects, to enact legislation "to enable cities which are now or may hereafter be contiguous or in close proximity, including any intervening land, to be united under one municipality, in order that the people may avoid unnecessary burdens of maintaining separate municipal governments." (See proclomation dated January 9th, 1906.)

This was the first subject named in the proclamation of the Governor calling the special session, and the Act under consideration was the first bill passed thereat.

On February 17th, 1906, a petition was presented to the Court of Quarter Sessions of Allegheny County, in which County the two cities referred to are situate, praying the Court to order a vote for or against consolidation as provided in the Act of Assembly. To this petition D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and H. W. Heckelman filed exceptions, which came on to be argued in due time. In that Court the Appellants argued but two exceptions, namely,

1st. That the legislation is not within the proclomation of the Governor convening the Assembly in Extraordinary Session.

2nd. That the said Act is local or special legislation and in conflict with Art. III, Sec. 7, sub-division 11, of the Constitution of the State.

(See opinion of McClung, J., in the record).

The Court of Quarter Sessions on April 30th, 1906, overruled the exceptions and ordered that an election be held within the territorial limits of the two cities at the usual polling places therein; and this election was held June 12th, 1906. The vote resulted as follows:

For consolidation,	37,864
Against consolidation,	17,713
Majority for consolidation,	20,151

The vote having been counted and certified to, the Court of Quarter Sessions on June 16th, 1906, entered a decree that "the City of Allegheny, the lesser city, be annexed and consolidated with the City of Pittsburgh, the greater or larger city, so that they form but one city."

The exceptants then appealed to the Superior Court, which has jurisdiction in appeals from Quarter Sessions and obtained an order of supersedeas. This appeal was argued in the Superior Court on October 8th, 1906, and on November 19th, 1906, the judgment of the Court of Quarter Sessions was affirmed. On November 20th, 1906, a petition was presented to the Supreme Court of Pennsylvania for an allowance of appeal and supersedeas. The appeal was allowed and supersedeas granted, and the case was argued in that Court on the first Monday of January, 1907, and on the 11th day of March, 1907, that Court affirmed the decree, the decision of the court being unanimous, whereupon an application was made to the Supreme Court of the United States for an appeal and supersedeas and the appeal was allowed and supersedeas granted.

There are numerous reasons of a public character which justify the application to this Court to dispose of this case as speedily as possible, consistent with the other duties of the Court. The proceedings have been going on for over a year and necessarily the uncertainty which exists as to the future of the two political subdivisions, does and will affect them until the questions are put at rest by the action of this Court. There are now a number of public improvements required in both cities. With respect to some of them the course to be presented depends entirely upon consolidation, for if the cities remain separate, while the necessity will continue the mode of procedure will be different. If consolidated provision for such improvements by the separate cities will be a waste of money, because the consolidated city can provide for such necessity at much less expense. For instance, each city has different water plants. The City of Pittsburgh is now erecting a very large filtration plant and which can be readily extended to afford filtered water to the City of Allegheny. The City of Allegheny is in urgent need of a better water

supply and is now ready to offer for sale a large issue of bonds, amounting to about $1,000,000., which has been authorized by a vote of the people, for the extension and improvement of its water plant, and this expense would be nearly, if not altogether, a useless waste of money if consolidation be effected. The need for pure water is urgent; the longer it is delayed, the longer the cities will continue to suffer.

The contention that the consolidation will increase the burden of taxation on the tax payers of the present City of Allegheny, is without any warrant in fact.

The tax rate in the City of Pittsburgh for the year 1907 for City expenses, sinking fund and interest and general school expense, is 12 1/2 mills; the tax levy for the City of Allegheny for the same purposes is 17 8/10 mills. In each City the public school authorities in each ward levy and collect a local tax for the ward school purposes, over which the City authorities have no control. This ward school tax varies in the different wards of the different cities, the average for the whole of each city being about the same.

In addition to this, the proposed issue of bonds by the City of Allegheny, hereinbefore referred to, will bring the debt of that City to within less than $100,000.00 of its constitutional power to incur debt; while the City of Pittsburgh can issue about $25,000,000.00 of debt without reaching its constitutional limit; the limit fixed by the Constitution being the same in both cases, namely, seven per cent. of the assessed valuation of the property therein subject to taxation.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

264.

No. [redacted] OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

vs.

CITY OF PITTSBURGH, Defendant in Error.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

JOHN G. JOHNSON,
WILLIAM A. STONE,
Attorneys for Plaintiffs in Error.

Smith Bros. Co. Inc., Franklin Print. 412 Grant Street, Pittsburgh.

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IN THE

Supreme Court of the United States.

No. 670 OCTOBER TERM, 1906.

D. HUNTER, JR., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error,

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CITY OF PITTSBURGH, Defendant in Error.

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Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

Facts.

The federal question raised in this case was averred and claimed by the plaintiffs in error throughout the entire proceedings:

1st. In the exceptions filed to the petition of the City of Pittsburgh. See Exceptions Nos. 12, 13 and 14, page 26 of the transcript of record.

2d. In the exceptions filed to the findings of law and order of Court of Quarter Sessions of Allegheny County. See first exception, page 31 of transcript of record.

3rd. In the exceptions filed to the decree of the Court of Quarter Sessions of Allegheny County. See third exception, page 33 of the transcript of record.

4th. In the specifications of error filed in the Superior Court of Pennsylvania. See fifth, sixth and seventh specifications of error, on page 41 of the transcript of record.

5th. In the assignments of error filed in the Supreme Court of Pennsylvania. See fifth and sixth assignments of error, page 57 of the transcript of record.

SECOND. The records show that there has been no delay in the various stages of the consideration of this case, and therefore, it is not manifest that the writ of error was taken for the purpose of delay; nor does the record disclose any action or non-action on the part of the plaintiffs in error that justifies the allegation that there is any purpose of delay on their part.

(a) The Act of Assembly in consideration became a law February 7th, 1906, and ten days after that date, the City of Pittsburgh presented its petition in the Court of Quarter Sessions of Allegheny County, Pennsylvania, for the annexation of Allegheny to Pittsburgh, and not until after said petition was presented did the plaintiffs in error assume and undertake to dispute this Act of Assembly, and not until after said ten days did they employ counsel or get into a position to act together in disputing the Act of Assembly under which consolidation was proposed.

(b) The exceptions filed by the plaintiffs in error in the Court of Quarter Sessions of Allegheny County were argued by their counsel at the first occasion when they could have been argued.

(c) The appeal from the Court of Quarter Sessions to the Superior Court of Pennsylvania was argued by agreement of counsel, on the very first day and the very first case that could have been argued in said court.

(d) The appeal from the Superior Court of Pennsylvania into the Supreme Court of Pennsylvania was argued by agreement of counsel on the very first day and the first case that could have been argued in that court, after said appeal was taken, and unless taking an appeal from the lower to the higher court, where parties feel aggrieved, is evidence of purpose of delay, the allegation on the part of the defendant in error, that this writ is taken for the purpose of delay, is without foundation.

(e) After presenting the petition for the consolidation in the Court of Quarter Sessions of Allegheny County, the Supreme Court of Pennsylvania would not have entertained jurisdiction, as was done in *Sample vs. City of Pittsburgh*, 212 Pa. St., page 537, without violating the precedents established by that court in reference to such jurisdiction, as their jurisdiction with the Court of Quarter Sessions of Allegheny County is concurrent.

THIRD. The plaintiffs in error reaffirm that their purpose is not for delay, but because they believe that injustice has been done them.

FOURTH. Allegheny City is a free city, created by special charter of the state, approved March 31st, 1870, P. L.

717. This charter grants to Allegheny City perpetual succession, and constitutes it a corporation or body politic, under the name and style of the City of Allegheny, giving it power to convey, purchase, receive, possess and enjoy lands and tenements, hereditaments, liberties, franchises and judicatories, goods, chattels and effects, giving them power to grant, bargain, sell, alien, convey, mortgage, pledge, encumber or dispose of the same, making it capable to sue and be sued, plead or be impleaded in all the courts; and to have and use a common seal, etc., and providing in Chapter 5, Section 3, of said charter:

> "That all property, real, personal or mixed of any nature whatsoever, now belonging to the city of Allegheny, is hereby vested in the corporation created by this act, and their successors, to and for the use and benefit of said citizens forever."

There is no provision in said Act of Assembly that the legislature retains the right to alter, amend or repeal said charter. See Appendix No. 1.

The City of Allegheny is still governed by this charter of 1870, and while it, by reason of the Act of May 23, 1874, P. L. 230, of the General Assembly, classifying cities, has become a city of the second class owing to its increase of population, by the census of 1890, yet Allegheny has never accepted the provisions of the Act of May 23, 1874, P. L. 230, as was decided by the Supreme Court of Pennsylvania in *Commonwealth vs. Wyman,* 137 Pa. St., page 508.

It has passed from a city of the third class to a city of the second class without shock or disturbance, and while enjoying the additional offices of a city of the second class, it

still retains all the privileges and franchises granted to it by the Act of March 31, 1870, P. L. 717.

FIFTH. The legislature of Pennsylvania passed an Act providing for the annexation of a smaller to a larger city in any county where the same are contiguous, approved April 20, 1905. See Appendix No. 2. This Act of Assembly, the Supreme Court of Pennsylvania held to be unconstitutional, in *Sample vs. City of Pittsburgh,* 212 Pa. St., 537.

SIXTH. At a special session of the legislature convened by the Governor of Pennsylvania to meet on January 15, 1906, the law in controversy was passed, to enable cities that are now or may hereafter be contiguous or in close proximity to be united. See page 8 of Record.

The Supreme Court of Pennsylvania decided this law to be constitutional. See Appendix of Brief of defendants in error in support of the motion to dismiss or affirm.

For further facts in this case, see facts recited in the Brief of defendants in error in support of motion to dismiss or affirm.

SEVENTH. At the election held in Allegheny City when the people voted for or against consolidation, the votes in favor of it were 6,747 and the votes against it were 12,307, showing that almost two to one of the electors of Allegheny City are opposed to consolidation with Pittsburgh. See Brief of defendant in error, in support of motion to dismiss or affirm, page 8.

EIGHTH. There is no reason for haste in the adjudication of this case, more than in the ordinary case, outside of the desire for speedy consolidation by the politicians sup-

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porting the Pittsburgh administration, which is different in politics from the Allegheny administration.

Pittsburgh and Allegheny have existed under separate municipal governments for more than one hundred years, and under the law in controversy consolidation can be affected at any time in the future.

NINTH. It is admitted by the defendant in error in their answer filed in the Quarter Sessions Court, that Pittsburgh and Allegheny are the only two cities in the State of Pennsylvania that are contiguous or in close proximity, and the only two cities to which this law in controversy is applicable. See page 29 of Record.

TENTH. It is admitted in the answer of defendant in error that the City of Pittsburgh has a population of about 350,000, and the City of Allegheny has a population of about 150,000 at the present time, and that they are separated alone by the Allegheny and Ohio Rivers.

ELEVENTH. The City of Allegheny owns a great deal of property, real, personal and mixed, which fact is admitted in the answer of defendant in error.

Points of Law and Argument of Plaintiffs in Error in Opposition to Motion to Dismiss or Affirm.

Reply to Motion to Dismiss.

Under this head the Defendant in Error has presented an argument which we prefer to consider in connection with our reply to the motion to affirm.

As a federal question at the outset was raised in the Allegheny County Courts, and was presented to the appellate tribunals, we think, the real question in this Court, under the present motion, is whether or not the judgment of the Court below should be affirmed.

We concede that though a federal question be presented, if it is too frivolous to be worthy of consideration, or if it be one which has been settled by the decisions of this Court, a motion to dismiss can be sustained; but inasmuch as the motion to affirm rests upon the assumption that there is nothing disclosed by the record justifying a reversal of the judgment of the Supreme Court of Pennsylvania, the consideration of that motion is necessarily involved in considering the merits of the appeal.

I.

It appearing from the record that the Plaintiffs in error set up certain sections of the Federal Constitution as a bar to the proceedings in the State courts, and the judgment of the State courts being that they constituted no such bar, it

is not open to question that the Supreme Court of the United States has jurisdiction, and the motion to dismiss must be overruled.

Williams vs. Eggleston, 170 U. S. Rep., 304.

> "Where the federal question is distinctly set up in the bill, and insisted on at every step, and the State court could not have decided as it did without overruling the claim, this Court has jurisdiction to review the judgment on writ of error."

Otis Co. vs. Ludlow Co., 201 U. S. Rep., 140.

In the case of the *West Chicago Street Railway Company vs. The People of the State of Illinois*, 201 U. S. Rep., 507, this Court said:

> "Although the judgment of the State court rests partly on the ground of local or general law, and although the opinion may not expressly refer to the Constitution of the United States, if by its necessary operation, the judgment rejects a claim based on constitutional rights specifically set up in the answer, that the relief prayed cannot, in view of the case, be granted consistently with the contract or due process clause of the Constitution; this Court has jurisdiction to review under Section 709 Revised Statutes."

Reply to Motion to Affirm.

FIRST.

As under this head we must show that the motion to affirm should not be allowed; necessarily in support of such contention, we must show that the appeal is neither frivolous nor one which raises a question settled by decisions of this Court, such as render it impossible again to raise it.

The City of Allegheny was incorporated by an amended Act approved the 21st day of March, 1870 (P. L. 717). By this Act said City was constituted "a corporation and a body politic under the name and style of the City of Allegheny," with power "to have, purchase, receive, possess and enjoy lands, tenements and hereditaments, liberties, franchises and judicatories, goods, chattels and effects, to them and their successors forever, or for any other or less estate, and the same lands, tenements, hereditaments, goods, chattels and effects by such name to grant, bargain, sell, alien, convey, mortgage, pledge, encumber or dispose of at their will and pleasure."

By said Act it was, *inter alia,* provided:

> "All property, real, personal or mixed of any nature whatsoever now belonging to the City of Allegheny is hereby vested in the corporation created by this Act, and their successors, to and for the use and benefit of its citizens forever."

By the Act of Assembly, approved February 7th, 1906, the constitutionality of which we challenge, it was provided,

concerning two cities situated toward each other as are the Cities of Pittsburgh and Allegheny, that the Councils of either of said cities might by ordinance direct that a petition should be filed in the Court of Quarter Session of the County in which such cities were situated, "praying that the two cities and any intervening land other than boroughs, shall be united and become one city."

It was further provided that upon the filing of such petition, the Court should fix a time for the hearing thereof, and should direct that notice should be given to the Mayor or chief executive officers of each of the said cities; that any person interested might file exceptions to said petition prior to the date fixed for hearing; that at such hearing any person in interest should be heard; but that if the Court should find that the petition and proceedings were regular and in conformity with the Act, it should order an election to be held in the said cities to vote for or against the proposed consolidation, at which all the legal voters of said cities, and of the intervening land, if any, should be qualified to vote.

It was further provided that an election should thereafter be held; and that if it should appear that a majority of all the lawful voters of the cities and of the intervening land, voting upon the said question, voted in favor of the annexation, the Court of Quarter Sessions should enter a decree annexing and consolidating the lesser city and any intervening land, other than boroughs, with the greater city so they shall form but one city and in the name of the greater city.

By said Act it was, *inter alia*, provided:

"SECTION 8. Each of the constitutent cities and the intervening land, if any, so consolidated, shall pay

its own floating and bonded indebtedness and liabilities of every kind, and the interest thereon, as the same existed at the time of annexation; and the councils of the consolidated cities shall levy, respectively, on the properties in each of the said cities and intervening land so consolidated, and as they existed at the time of annexation, a tax sufficient to provide funds for each to pay its own floating and bonded indebtedness and liabilities and interest as the same may accrue. The Court of Quarter Sessions is given jurisdiction to ascertain what the bonded and floating indebtedness and liabilities, properties and assets of each of the said cities and said intervening land may be, due notice being given and an opportunity to be heard being allowed to all parties in interest."

It was provided further:

"Except as herein otherwise provided all the property, real, personal and mixed, and rights and privileges of every kind, vested in or belonging to either of said cities or to the intervening land prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city."

The City of Pittsburgh, containing a much larger population than the City of Allegheny, under the provisions of this Act presented its petition for consolidation. Exceptions were filed to said petition. One of said Exceptions was in these words:

"6th. The City of Allegheny has improved its streets, established its own system of electric lighting, and has established a satisfactory water supply. The City of Pittsburgh is largely in debt; has established large and extensive parks in the eastern part of the

city; built extensive and costly boulevards; extensive and costly reservoirs for the supply of water, and is contemplating still greater expenditures of money in the cutting down and grading of the elevation of Fifth avenue, known as the hump; and the construction of an extensive filtration plant; and a large expenditure of money in the purchase of the Monongahela Water Company's plant, a plant owned by a private corporation; and the further expensive construction of an electric light plant to be owned by the City of Pittsburgh, the said city owning at the present time no lighting plant, it being supplied with light from a private corporation; and the further expenditure of various sums of money for the acquirement of advantages and property which the citizens of Allegheny now practically own and enjoy, but which the citizens of Pittsburgh do not, and to acquire which would largely increase the indebtedness of the City of Pittsburgh, and if the City of Allegheny should be annexed to the City of Pittsburgh the tax payers of Allegheny including your respondents, will, in addition to the payment of the taxes necessary to pay and liquidate their own indebtedness, have to bear and pay their proportion of the new indebtedness, that must necessarily be created to acquire the facilities, properties and improvements herein stated, in Pittsburgh; all of which would be of no benefit to the citizens and tax payers of Allegheny, including your respondents, who now own and possess these advantages and privileges, and which will largely and unnecessarily increase the taxes of your respondents, as well as the taxes of the other citizens of Allegheny, without any material benefit to them whatever."

It is true as is so frequently asserted in the Brief filed in support of the motion to dismiss, that averments in de-

nial of the statement last recited were made on behalf of the City of Pittsburgh; but in view of the fact that under the Act of Assembly which provided for the consolidation the Court was limited to finding that the "petition and proceedings were regular and in conformity with the Act," the issue of fact thus raised could not be, and was not, determined.

The fact of such non-determination, however, hardly justifies the very frequent citations by the defendant in error from its answer, as though what it said did in any way settle the dispute.

We submit that we are entitled to have the present appeal considered upon the assumption that an indebtedness which had been contracted by the City of Allegheny for a system of water supply and electric lighting, has been saddled upon the properties in its boundaries, whilst the City of Pittsburgh, which had established no such system, will be supplied therewith hereafter by contracting a debt which will be imposed upon the properties in the City of Allegheny, as well as upon those in the City of Pittsburgh.

The record also presents a case in which the City of Allegheny, being possessed of valuable property, which by its Charter was vested in it for the use and benefit of its citizens forever, has been stripped of its property for the benefit of the City of Pittsburgh.

The fact that the City of Pittsburgh presented the petition for consolidation, and that such petition was opposed by the City of Allegheny from the outset, is inconsistent with the idea appearing so often in the Brief of defendant in error, to the effect that the latter city is the one benefited by the consolidation.

The plaintiffs in error do not deny that it is within the province of a Legislature to alter, amend, and revise the laws governing those governmental sub-divisions known as municipalities; nor that it is within the power of a Legislature, so long as it preserves the rights of property of the respective corporations involved, to merge municipal governments.

Their contention is, that the Legislature did not merge the two cities; but that it delegated its power to others who were permitted to exercise it in a way violative of the Constitution of the United States.

It is contended that a municipal corporation may have rights of property vested in it for the benefit of its citizens of which it cannot be deprived without due process of law, without violating the federal protection accorded to contracts.

The water and electric plants as well as other property which belongs to the City of Allegheny were held by it under the protection of the Federal Constitution.

It was no part of the governmental duty of the City of Allegheny to transact the business of supplying water or electric lighting. It had a constitutional right to demand that it should not be deprived of these properties; that if any merger or consolidation was enacted it was necessary, for the validity of such enactment, that provision should be made for compensation; and that it was most inequitable to appropriate these plants for the benefit of a consolidated city, whilst the former owner was subjected to the duty of helping to pay for the supply to the larger of the two cities consolidated, of such water and electric light systems.

The plaintiffs in error appeal to the principle which was settled by this Court in *New Orleans vs. New Orleans Water*

Works Company, 142 U. S., 91, where this Court, speaking through Mr. Justice Brown, said:

> "A municipal corporation, being a mere agent of the State, stands in this governmental or public character in any contract relations with its sovereign, at whose pleasure its charter may be amended, changed or revoked without the impairment of any constitutional obligation, *while with respect to its private or proprietary rights and interests, it may be entitled to the constitutional protection.*"

The contention of the plaintiffs in error is, *inter alia*, (1) that property rights secured to the citizens of Allegheny by a Charter which was a contract with the State of Pennsylvania, were taken away without compensation; and (2) that this was done, and the merger or consolidation was accomplished, illegally, without due process of law, in conflict with the Fourteenth Amendment of the Constitution of the United States.

We submit that the questions thus raised have not been heretofore settled by this Court; and that the establishment of the principle that a Legislature may revise, amend or destroy the governmental powers of municipalities, does not determine the question presented. Whether we are right or wrong in the point we submit, we respectfully urge that it is one which raises a federal question and that the question thus raised, is not frivolous and has not been heretofore determined.

If we are right in this contention, the present motion is hardly the instrumentality by which the question should be determined, inasmuch as by such determination the plaintiffs in error will be deprived of their right of oral argument before and presented to this Court.

Whatever the Legislature of Pennsylvania might do, apart from the dealing with property rights, in the way of directing consolidations or mergers of municipalities, it was necessary for it to do, in accordance with the ordinary process of law.

The Legislature was unwilling to determine that there should or should not be a consolidation. It was beyond its constitutional power to provide specially for the merger of the Cities of Allegheny and Pittsburgh. It was necessary that it should enact a general law in order that the provisions of the Constitution of Pennsylvania in that respect should be complied with. By that general law it delegated to others its legislative duty. In making such delegation, its delegates were obliged to proceed by due process of law.

It is within the province of the Legislature to impose taxes; but if these taxes are assessed upon the basis of valuation, proceedings to value, if not in accordance with the Fourteenth Amendment, are violative thereof and invalid.

The question of whether there should be a merger of the two cities was one which could only be determined by a vote. Two parties were concerned in the question, and any proceedings which brought about a merger without the consent of one of the parties, was not in accordance with law.

After this preliminary statement, we beg leave to submit the following considerations:

By the decision of the Supreme Court of Pennsylvania, reported in 137 Pa. St., 508, in the opinion of Chief Justice Paxson, it is held that the transition to a city of the second class, under the classification Act of Pennsylvania, approved

May 23, 1874, P. L. 230, works no change in the government of Allegheny:

> "The transition from one class to another works no change in its government, except such as the law makes necessary to adjust it to the class in which it goes; it repeals no ordinances; it vacates no offices except those which it abolishes, and makes no vacancies to be filled except by creation of new offices."

In this case, the Court finds as a fact that the City of Allegheny is governed by its charter of March 31, 1870, and has never accepted the provisions of the classification Act of May 23, 1874.

The first question then to consider is, what rights do the City of Allegheny and the plaintiffs in error have under the charter granted to the City of Allegheny under the Act of March 31, 1870?

The charter of 1870 to the City of Allegheny, granted by the State, constitutes and creates a contract between the state and the City of Allegheny for the benefit of the City and its citizens, the City paying its taxes to the State and performing its obligations placed upon it by the Act itself. Under this charter Allegheny becomes and is an independent person or thing, having certain rights and certain privileges, and certain properties, and so long as it is in subjection to the State, obeying the police laws of the State and contributing and paying revenue to the State for the State's support, it then has a right to enjoy the franchises and privileges granted to it by the charter, and the charter is a contract between the City of Allegheny and the State of Pennsylvania.

Let us now look at the Act in controversy and determine whether that Act does impair this contract between the City and the State. The ninth section of the Act, provides as follows:

> "Except as herein otherwise provided, all the property, real, personal and mixed, and the rights and privileges of every kind vested in or belonging to either of the said cities or to the intervening land, prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city."
> See Record, page 11.

Bear in mind that this Act of Assembly is not creating a new city out of two old cities, but is annexing the lesser city to the larger city which shall retain its name, privileges, franchises and powers. We find in the Act itself, this provision:

> "That all property, real, personal and mixed, and the rights and privileges of every kind vested in or belonging to either of the said cities (which of course includes the lesser city), or to the intervening land, prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city."
>
> See Record, page 11.

Or in other words, that on consolidation, all the property, real, personal and mixed of Allegheny, is vested in and owned by the City of Pittsburgh.

Then is it not true, that the Act in controversy vests or grants or declares that the property of Allegheny shall be-

come the property of Pittsburgh, and that the property of Allegheny shall be vested in and owned by the City of Pittsburgh?

Can it then be doubted that the Act of Assembly in controversy impairs a contract existing between the State and the City of Allegheny and the citizens of Allegheny?

It certainly seeks to transfer the title of Allegheny to its property, to the City of Pittsburgh.

The Act of Assembly does not provide that the properties of the several cities consolidated under said Act, shall remain for the separate use and benefit of each of the consolidated cities, but vests the property of the lesser city in the greater city contrary to the rights of the citizens of each city as they may exist at the time of the consolidation.

But has the Legislature any right to pass a law transferring the property of Allegheny to the City of Pittsburgh under the cloak of consolidation, where the City of Allegheny by a vote of two to one, enters its solemn protest against such consolidation and transfer?

It is for this Court to say whether a contract does exist and whether that contract is impaired by this Act of Assembly.

In *Keis vs. Lowry*, 199 U. S. Reports, 233, in a writ of error to the Supreme Court of Michigan, this Court said:

> "It is the power and duty of this Court to determine for itself the existence or non-existence of a contract, the obligation whereof is claimed to have been impaired, and a federal question may be involved although

the State Court may have rested its decision on the construction of the Constitution and laws of the State."

Is there an impairment? That question this Court will determine. In *Powers, Auditor General of Michigan, vs. Detroit, Grand Haven & Milwaukee Railroad*, reported in 201 U. S. Reports, 543, this Court said:

"A state may, through its legislature, make a valid contract as to taxation with a corporation, which the latter can enforce; and this Court is not under the rule generally applicable as to the binding effect of decisions of the Supreme Court of the State, construing its statutes, concluded by the decision of that court as to whether such a contract exists, the extent of its terms and whether any subsequent law has impaired its obligations."

In *Graham vs. Folsom*, 200 U. S. Reports, 248, Mr. Justice McKenna says:

"The power of the state to alter or destroy its corporations, is not greater than the power of the state to repeal its legislation. Exercise of the latter power has been repeatedly held to be ineffectual to impair the obligation of a contract. The repeal of a law may be more readily undertaken then the abolition of townships, or the change of their boundaries or boundaries of counties. The latter may put on the form of a different purpose than the violation of a contract. But the courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of the state, but they will not ignore the effect of its action. * * * *Mt. Pleasant vs. Beckwith*, 100 U. S. Reports, 514, and *Mobile vs. Watson*, 116 U. S. Reports, 289, are cases in

which municipal corporation had incurred indebtedness, and afterward their municipal organization was destroyed and their territory added to other municipalities. It was argued in these cases, as it is argued in this, that such alteration or destruction of the subordinate governmental divisions was a proper exercise of legislative power to which creditors had to submit. The argument did not prevail. It was answered as we now answer it, *that such power extensive though it is, is met and overcome by the provisions of the Constitution of the United States, which forbids a state from passing any law impairing the obligation of contracts.*" See also *Shapleigh vs. San Angelo*, 167 U. S. Reports, 646.

The Supreme Court of Pennsylvania has decided, we admit, that the Act of Assembly in controversy, does not impair any contract between the state and the City of Allegheny and the citizens of Allegheny. But the question whether it does or not is a question for this Court to determine, because the determination of this question determines whether the Act of Assembly is in conflict with the Constitution of the United States, and this Court cannot admit that any state court can finally determine this question, namely, the question whether the Constitution of the United States is violated by the Act of Assembly of the state. It is not a question of whether the Constitution of Pennsylvania is violated by the Act of Assembly, but is the Constitution of the United States violated by this Act.

The various cases decided in the Supreme Court of Pennsylvania, cited by the defendants in error, relate to the power of the legislature of the state to alter, change or amend the laws pertaining to cities. But that is not the question here under discussion. The simple question is, the state having given Allegheny the charter of 1870, can the legis-

lature by another Act of Assembly, direct and compel the City of Allegheny to turn its property over to the City of Pittsburgh against its will and against its protest? Can the legislature by an Act of Assembly, under the cloak of consolidation, direct and compel one city to give its property up to another city against its protest?

We admit that the legislature retains the power to pass legislation for the police of the state; that it may alter, amend or regulate the laws governing cities, but we deny that under the charter of the City of Allegheny which vests its property in the City, the legislature has the power to legislate the title of the property belonging to the City of Allegheny over to and into the City of Pittsburgh.

In *New Orleans vs. New Orleans Water Works Company,* 142 U. S. Reports, 79, this Court held:

> "The municipal government was a mere agent of the state in its governmental character, and was in no contract relations with its sovereign at whose pleasure its charter may be amended, changed or revoked, without the impairment of any constitutional obligation."

But in this case, the charter is not amended, nor changed, nor revoked. But one city with all of its property is legislated into the greater city without the consent of the lesser city, and while the legislature might amend, and perhaps revoke the charter of Allegheny, it could not pass the property of Allegheny over to Pittsburgh, as it attempts to do in this case.

In *New Orleans vs. New Orleans Water Works Co., supra.* this Court also held:

"That such a corporation in respect to its private or proprietary rights and interests, might be entitled to constitutional protection."

The Massachusetts courts take the same view of such a corporation. See *Broome vs. Furner,* 176 Mass., 9.

In *New Orleans vs. New Orleans Water Company, supra,* the court further says:

"Enough cases have been cited to show the nature of a municipal corporation as stated by this Court. In general it may be conceded that it can own private property, not of a public or governmental nature, and that such property may be entitled, as is said, to constitutional protection. Property which is held by these corporations upon conditions or terms contained in a grant and for special use, may not be diverted by the legislature. This is asserted in *Commissioners, etc., vs. Lucas, Treasurer,* 93 U. S. Reports, 108-115; and in *Mount Hope Cemetery vs. Boston,* 158 Mass., 509, the Supreme Court of Massachusetts held that cities might have a private ownership of property which could not be wholly controlled by the state government."

An Act of Assembly may not be in conflict with the Constitution of the State, and yet may be in conflict with the Constitution of the United States. In holding that such an Act of Assembly is in conflict with the Constitution of the United States, this Court does not hold necessarily, nor pass upon the question of whether it is in conflict with the Constitution of the State or not. It is immaterial to this Court, whether it is, or whether it is not. While this Court may not see fit to traverse the judgment of the Supreme Court of the State in respect to the conflict of an

Act of Assembly with the Constitution of this State, yet the jurisdiction and power of this Court to determine whether an Act of Assembly of the State is in conflict with the Constitution of the United States, cannot be questioned, because it is the duty of this Court to enforce the Constitution of the United States, and the enforcement of that Constitution requires this Court to prohibit the enforcement of any Act of the Legislature of a State which is in conflict with the Constitution of the United States, and this Court cannot delegate that power, nor substitute any State court, or any other court, to exercise it.

See *Powers, Auditor General of Michigan, vs. Detroit, Grand Haven & Milwaukee Railroad*, 201 U. S. Reports, 543.

SECOND.

There have been many cases decided in this Court in which there has been dicta running along the decisions of the State Supreme Courts, as to the power of the legislatures of the state to alter, amend or annul charters of cities.

In none of the cases cited by the defendants in error has there been an issue similar to that raised by this record.

In the case of *Miller vs. Cornwall Railroad*, 168 U. S. Reports, 131, this Court simply decided that the judgment of the Supreme Court of the State was not in shape for review, because it did not appear in the record that the questions of the Act of Assembly being in conflict with the Fourteenth Amendment were raised.

THIRD.

The Act of Assmbly in controversy is so unusual, so unjust and so unreasonable that it is not due process of law, and is in conflict with the law of the land, and brings it in conflict with the Fourteenth Amendment of the Constitution of the United States.

(a) It is unusual because it is unlike any other procedure for the consolidation of cities that has ever been enacted. Diligent search fails to discover any Act of Assembly providing for the annexation of a smaller city to a larger city by a majority vote of the two.

When what was known as East Liberty or East End, and the Southside, formerly Birmingham, were annexed to the City of Pittsburgh, it was done under an Act of Assembly aproved April 6th, 1867, P. L. 846. This Act provided that that portion of the present City of Pittsburgh, now known as Southside, and that portion now known as East End, and Allegheny City lying on the north of the Allegheny River, should each have a separate vote, and if either of the said three divisions of territory should vote in favor of consolidation by a majority vote, it should be consolidated or annexed to the City of Pittsburgh, but if either of the three divisions of territory should vote against it, then that territory should not be annexed to the City of Pittsburgh. While the Southside and East End voted in favor of annexation, Allegheny City voted against it and was not annexed to the City of Pittsburgh.

This is the Act of Assembly which was construed by this Court in *Kelly vs. City of Pittsburgh*, reported in 104 U. S. Reports, page 78, and upon which case the defendant in error mainly rely.

The sole question in that case was whether a rural property owner living within the territory that voted for consolidation could have his property taxed for city purposes.

But that Act clearly gave to each sub-division of territory the right to determine for itself by a separate vote in that territory, whether it should or should not be annexed to the City of Pittsburgh. And Allegheny City voting as a separate territory polled a majority vote against annexation to the City of Pittsburgh, and has ever since maintained its separate municipality.

The legislature of Pennsylvania passed an Act entitled, "An Act for the annexation of any city, borough, township or part of township, to a contiguous city, etc.," approved April 28th, 1903, P. L. 332, which is the next legislation in Pennsylvania, on the subject of annexation of cities. But under this Act of 1903 it gave to the city, borough or township to be annexed, the right of a separate vote, and the right to determine for itself whether it would be annexed or not.

When Greater New York was consolidated the different territories voted on the question of consolidation, and those separate municipalities voting against consolidation were not consolidated. The City of Mt. Vernon voted against consolidation with New York, and preserves its separate municipality.

When the City of Boston was enlarged, each municipality was given the right to determine whether it should be embraced within the consolidation, and those separate municipalities voting against it were not consolidated. The Borough of Brookline is within the City of Boston, but it maintains its separate municipality, because it voted against consolidation with Boston.

In the enlargement of Chicago, the different municipalities were given a separate vote. So it has been in St. Paul, Providence, Detroit, Newark, Kansas City and Baltimore.

In all instances where these cities have been enlarged by the annexation of contiguous territory, that contiguous territory has been given the right to decide for itself by separate vote, whether or not it would be annexed to the larger city.

In Indianapolis the same rule prevailed, and there is within that city a town called Woodruff Place, which was given the right by separate vote to consolidate with Indianapolis, and voted against consolidation, and now preserves its separate municipality.

The recent Act of Congress permitted Arizona and New Mexico to have a separate vote to determine whether they should become one state.

When we say that this procedure in the Act of Assembly in controversy, proposing a majority vote of the two cities, is unusual, we mean that there never has been such a proposition before in legislation, providing for the annexation of a smaller city to a larger one, by a majority vote of the two territories.

When England formed its union with Ireland, Ireland was given a separate vote. History records numerous instances where one country has conquered another and annexed its territory by force of arms, but history records no Act of Legislative bodies, which enforces the annexation of a smaller city to a larger one, by and through a majority vote of the two.

(b) The Act of Assembly in controversy is unreasonable and unjust, because it proposes the annexation of a smaller city to a larger one by a majority vote of the two cities.

By referring to the brief submitted by the defendant in error in support of their motion to dismiss or affirm, on page 6, it will be seen that the City of Pittsburgh polled 31,117 votes in favor of consolidation, and 5,223 votes against it, a total vote of 36,340, and on page 8, we find that the City of Allegheny polled 6,747 votes in favor of consolidation, and 12,307 votes against it, making a total vote in the City of Allegheny of 19,054, which is a little more than one-half of the total vote of Pittsburgh. And while the vote in Allegheny against consolidation is nearly two to one of the vote in favor of it, the vote in the City of Pittsburgh in favor of consolidation is nearly six times the vote in Pittsburgh against consolidation.

Of what use was it for Allegheny to vote at all on the question. And of what use was it to submit the question of consolidation to the vote of Allegheny. There was no equality in the proposition and no fairness. The law authorizing a decree of consolidation in case a majority of the voters of the two cities should vote in favor of it, practically annulled the vote of Allegheny. If every vote in Allegheny had been against consolidation, there would be 19,054 votes against it, and added to that, the 5,323 votes against it in Pittsburgh, would make a total of 24,277, still leaving a majority of 6,840 in favor of consolidation.

To say that this is fair; to say that it is reasonable; to say that it is just, is a travesty on justice. It is answered by saying that the legislature could consolidate the two cities without any vote at all.

The Act of Assembly undertakes to give the people of Allegheny a vote upon the question, but gives it in such a manner as to take the vote away from them and completely nullify the vote of Allegheny.

If the legislature could consolidate the two cities without any vote, still it cannot give Allegheny a vote and then make it so unfair that the vote becomes a nullity.

When the legislature undertakes to give a citizen or a community a right to vote with another community, the vote must be fair and equal to both communities. They might as well have said that only every other vote polled in Allegheny should be counted. They might as well have said that only the votes in favor of consolidation, polled in Allegheny, should be counted. It is a mockery of fairness, and a piece of hypocrisy which impartial men cannot approve.

This Court has already had before it, an Act of Assembly which was unreasonable, unusual and unfair, and although that Act of Assembly had been construed to be constitutional by the Supreme Court of the State of Texas, yet this Court said it was so unjust, so unusual, so unreasonable and unfair, that it was not due process of law, and was in conflict with the Fourteenth Amendment of the Constitution of the United States. This was in the case of *Roller vs. Holly*, reported in 176 U. S. Reports, 398.

The legislature of the State of Texas passed an Act of Assembly providing for the service of process on non-residents, giving them five days' notice. The Supreme Court of Texas declared that Act was not in conflict with the Constitution of Texas. On writ of error from this Court to the Supreme Court of Texas, this Court held that the law giv-

ing five days' notice to non-residents in a summons, was so unreasonable, so unjust and so unusual that, notwithstanding the decision of the Supreme Court of Texas, it must be held not due process of law and in conflict with the Fourteenth Amendment of the Constitution of the United States.

In that case the Court dwelt upon the time of notice given defendants under like circumstances in other states, and held that the Act of Assembly under consideration was not due process of law, and was in conflict with the Fourteenth Amendment of the Constitution of the United States.

Therefore, the question in this case is not—Has the Act of Assembly in controversy been regularly and properly enacted? but—Does the effect of the act accomplish the doing of a thing by DUE PROCESS OF LAW? That is, in accordance with the Law of the Land; for this Court in many cases has defined DUE PROCESS OF LAW to mean LAW OF THE LAND.

In the case of *Davidson vs. New Orleans,* reported in 96 U. S. Reports, 101, the Supreme Court said:

> "The equivalent of the phase DUE PROCESS OF LAW, according to Lord Coke, is found in the words LAW OF THE LAND, in the Great Charter."

See also *Murray vs. Hoboken Land Company,* 18 Howard, 276.

In the famous *Dartmouth College case,* reported in 4th Wheaton, 581, Daniel Webster in his argument said:

> "If the Constitution be not altogether waste paper, it has restrained the power of the legislature in these particulars. If it has any meaning, it is that the leg-

islature shall pass no act directly and manifestly impairing private property or privilege. It shall not judge by act. It shall not decide by act. It shall not deprive by act. But it shall leave these things to be tried and adjudged by the law of the land. * * * By the law of the land is most clearly intended the general law, a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under protection of the general rules which govern society. Everything which may pass under the form of an exactment is not, therefore, to be considered the law of the land."

Dartmouth College vs. Woodward, 4th Wheaton, 579.

FOURTH.

The argument of the defendant in error, that the Supreme Court of the United States will give due weight and consideration to the decisions of the highest courts of a state in construing the Constitution of that state has no relevancy to the question we present. We are not asking this Court to construe the Constitution of the State of Pennsylvania, but the Constitution of the United States. The fact that the Quarter Sessions Court of Allegheny County, the Superior Court of Pennsylvania, and the Supreme Court of Pennsylvania, have construed the Act in question, and decided that it is not in conflict with the Contsitution of Pennsylvania, leaves it open for this Court to determine whether it is in conflict with the Constitution of the United States.

We cannot refrain from calling the attention of this Court to the inconsistency which the Supreme Court of Pennsylvania has manifested in its construction of the Act

of Assembly in question, and in its construction of the Act providing for the annexation of a smaller city to a larger one, approved April 20, 1905. See L. P. 1905, page 221, or Appendix No. 2.

The Supreme Court of Pennsylvania in construing the Act of 1905, in the case of *Sample vs. City of Pittsburgh*, 212 Pa. St., 533, decided that Act to be unconstitutional, and held, in the opinion delivered by Justice Mestrezat, that a statute providing for the annexation of one city to another, is a law regulating the affairs of cities, within the meaning of Article III, Section 7, Sub-division 2, of the Constitution of Pennsylvania, while the same court in the opinion delivered by Justice Brown in the case at bar, held that "in legislation providing for the annexation of any two cities of the Commonwealth, there is no regulation of the affairs of any two particular cities."

The decision of the Supreme Court of Pennsylvania, in *Sample vs. City of Pittsburgh*, is entirely consistent with all the previous decisions of that Court construing special legislation as prohibited by Article III, Section 7, Sub-division 2, of the Constitution of Pennsylvania, while the decision of that Court in this case, is in conflict wth all decisions heretofore rendered on the subject of special or local legislation prohibited by the Constitution of Pennsylvania.

Comparison of the two Acts of Assembly, that is, the Act of April 20, 1905, and that of February 7, 1906, now in controversy, leaves it impossible to see why if one is unconstitutional, the other is not unconstitutional. If *Sample vs. City of Pittsburgh* is decided rightly, then the decision rendered in this case is wrong. It is impossible to reconcile the two decisions.

John G. Johnson,
William A. Stone,
Attorneys for Plaintiffs in error.

APPENDIX.

Exhibit Act No. 1.

(Approved March 31, 1870.)

AN ACT

To reduce the charter of the City of Allegheny and the several acts amendatory thereof into one act, and to revise the same.

CHAPTER FIRST—INCORPORATION.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That the inhabitants of the City of Allegheny, in the county of Allegheny, as the same extends and is now incorporated, under the name and style of the mayor, aldermen and citizens of Allegheny, are hereby constituted a corporation and a body politic, under the name and style of the City of Allegheny, and by the same name shall have perpetual succession, and they and their successors, by such name, shall at all times forever be able and capable in law to have, purchase, receive, possess and enjoy lands, tenements and hereditaments, liberties, franchises and judicatories, goods, chattels and effects to them and their successors forever, or for any other or less estate, and the same lands, tenements, hereditaments, goods, chattels and effects, by such name to grant, bargain, sell, alien, convey, mortgage, pledge, encumber or dispose of at their will and pleasure, and by the same name shall be able and capable in law to sue and be sued, plead or be impleaded and defend in all

courts of record and elsewhere, in all manner of suits, actions, causes, complaints, matters or things that to the said city, as a body politic and corporate in law and in fact, shall and may appertain, and for that purpose shall have and use a common seal, and the same from time to time may change, alter, deface and make anew.

SECTION 2. The corporate limits and jurisdiction of the City of Allegheny shall embrace and include all the territory being within the wards as they are now constituted and bounded and form the City of Allegheny as now incorporated, under the name of the mayor, aldermen and citizens of Allegheny.

CHAPTER SECOND—OFFICERS, THEIR ELECTION AND APPOINTMENT.

SECTION 1. The municipal government of the city shall be vested in one principal officer, to be styled the mayor, and two boards of councilmen, to be denominated the select and common councils, together with such other officers as are in this act named or may be created by councils under authority of this act, and said municipal government shall exercise such powers and privileges and be subject to such restrictions as are granted and prescribed in this act and such previous acts as are not re-enacted, repealed or supplied by this act.

SECTION 2. The wards of said city shall be respectively represented in select council by two representatives chosen to serve for the period of two years each.

SECTION 3. The several wards of said city shall be respectively entitled to one representative in common council for every five hundred and seventy-five resident taxables, to serve as common councilmen for the period of one year; *Provided,* That each ward shall have at least two members of common council: *And provided further,* That if in any ward there shall be an excess above two-thirds of the said

number of taxables, such ward shall be entitled to a representative for such excess.

SECTION 4. That the mayor and presidents of councils shall constitute a commission, whose duty it shall be prior to the first regular municipal election after the passage of this act, and triennially thereafter, to apportion the representation of the several wards in common council, on the basis provided in section third, from the list of resident taxables of each ward returned by the assessors last previous to such meetings of said commission.

SECTION 5. That the present representatives of the various wards in select council shall respectively serve out the term for which they were elected as fully, and with like effect, as if elected under the provisions of this act.

SECTION 6. When two select councilmen are to be chosen to represent any one ward at the same election, the one having the highest number of votes shall be entitled to the two year term, and the candidate having the next highest number of votes shall be entitled to the one year term.

SECTION 7. In case two or more candidates for either select or common council receive an equal number of votes, and in consequence there is no election, the respective councils shall determine by lot which of the candidates receiving an equal number of votes shall represent the ward, and in select council which candidate shall be entitled to the long term.

SECTION 8. No one shall be entitled to represent a ward in select or common councils except a citizen of the ward he represents, and in case of removal from the ward, his seat shall be declared vacant and a new election ordered to fill the unexpired term; the qualification of a common councilman shall be that of a representative, and of select councilman that of a senator of the commonwealth.

SECTION 9. The regular elections for mayor, councilmen, municipal and ward officers shall be held on the second Tuesday of December in each and every year: *Pro-*

vided, however, That the next election for mayor shall occur on the second Tuesday of December, one thousand eight hundred and seventy-one, and thereafter every third year.

SECTION 10. That all elections in said city shall be held in each ward by the judges, inspectors and clerks appointed to hold the general elections, who shall meet within their respective wards at the place designated by councils, and shall proceed to hold and conduct such elections according to act of assembly, approved July second, one thousand eight hundred and thirty-nine, and its supplements; that the qualified voters of said city shall meet together in their respective wards, at such time and places, to elect the officers authorized by this or other acts of assembly; and the manner of voting shall be by tickets printed or written, or partly printed or partly written, severally classified as follows, viz: One ticket shall embrace all city officers voted for, and labelled "city;" one ticket shall embrace the names of all candidates for city councils and be labelled "councils," and one ticket shall embrace the names of all candidates for school directors, and all ward officers to be voted for, and be labelled "ward;" each class of tickets shall be deposited in a separate ballotbox; when the election shall be closed, and the number of votes for each candidate voted for in the respective wards shall be counted and ascertained, the judges authorized to hold and conduct such elections shall within twenty-four hours thereafter meet together at the city hall of said city, and shall prepare, under their respective hands and seals, a return thereof, containing the names of persons voted for for mayor and other officers, with the number of votes for each of them, and designating who are elected, and shall forthwith give a notice in writing to the officers elect of their election, and shall file the original returns with the mayor of said city; and the said judges shall appoint one of their number whose duty it shall be to deliver a true copy of said return, under seal, to the mayor of said city within three days after said election, and by him be delivered to councils upon the day of their organization: *Pro-*

vided, however, That the returns for councils shall be made separate, and endorsed "select council" or "common council;" and the select and common councils shall, on the date of their organization, and after the respective councils are organized, meet in joint session to examine the election returns for mayor or other city officers, and to hear all remonstrances and objections to the same, and judge and determine thereon, and to declare the person qualified having the greatest number of votes to be legally elected; and in cases where the election has been unfairly or illegally conducted, or the number of illegal votes given may render the result doubtful, shall have power to set the same aside and order a new election, giving notice thereof as in case of other elections; and the respective councils shall have full power to vacate the seat of any of their own members for misbehavior, neglect of duty or other misdemeanor, and to order new elections for the same, and so in like manner, as often as occasion may require, on the death, resignation or inability of a member or members of said councils or other officers; and it shall be the duty of the mayor of said city to give at least ten days' notice of the time and places of holding elections authorized by this act, by proclamation in the public papers or by handbills posted up at the most conspicuous places within the boundaries of said city.

SECTION 11. That the councilmen elect shall, on the first Tuesday following the first Monday of January in each year, assemble at their council rooms and shall organize their respective councils; each council shall separately determine and establish rules of their proceeding, and be the judge of the election returns and qualifications of its own members.

SECTION 12. That all persons qualified to vote for state or county officers, and who shall have paid a city tax within a year previous, shall be entitled to vote at all elections held in and for said city; and it shall be the duty of the city treasurer to furnish election officers a printed list of persons who have not paid a tax within a year previous.

SECTION 13. On the day of organization the president of each council shall be sworn or affirmed, by a member thereof, to perform his duties with fidelity, and he shall immediately thereafter administer the same obligation to each member.

SECTION 14. The other officers of said city, to be elected by councils, shall consist of a treasurer, controller, engineer, solicitor, superintendent of water works, and such other officers as councils may from time to time deem necessary and by ordinance create.

SECTION 15. The election of officers by council shall be at a time fixed by ordinance, and shall be by a *viva voce* vote; and a concurrence of a majority of the whole number present shall be required, and the result shall be recorded in the journal of proceedings; the salaries of said officers, their duties and term of service, not less than one or more than three years, to be fixed and designated by councils, by ordinance, except wherein the same are specially fixed and determined in this act; officers elected or appointed to fill vacancies shall respectively hold for the unexpired term only, and until the election or appointment and qualification of their successors: *Provided*, That ten days shall be allowed retiring officers to prepare papers and unfinished business, to be handed over to their successors in office.

SECTION 16. That before entering upon the duties of his office the mayor elect shall be sworn or affirmed, in the presence of councils, by the chairman or any member of council, to support the Constitution of the United States and the Constitution of this Commonwealth, and to use fidelity in the discharge of his duties as mayor.

SECTION 17. That in case of a vacancy in the office of mayor, from any cause whatsoever, it shall be filled or supplied by a new election for the remainder of the term of office, to be held within thirty days thereafter, as councils shall designate, of which election the mayor for the time

being shall give notice as in other elections; and until such vacancy is filled by a new election, councils shall appoint a mayor to act *pro tempore.*

SECTION 18. The meetings of said councils for the transaction of business shall be public, and at such time and place as, by ordinance duly passed, shall be fixed for that purpose.

SECTION 19. Two aldermen shall be elected for each ward, under the provisions and regulations of an act, entitled "An Act for the election of aldermen and justices of the peace," approved June twenty-first, one thousand eight hundred and thirty-nine, who shall hold their offices for the time inscribed by the constitution, and shall have respectively and severally all the powers, jurisdictions, authorities, fees and perquisites of justices of the peace of this commonwealth: *Provided,* That no election shall be held under this act for aldermen until a vacancy occur by death, removal, expiration of term of service or in other manner whatsoever it shall become necessary.

SECTION 20. The citizens of each ward shall elect constables annually, according to the provisions of the various acts of assembly of the commonwealth relative to constables.

SECTION 21. That all the officers of the said city, whether created by this act or by ordinance, shall, before entering upon discharge of their duties, give bond with security approved by the president of select council, in such sum as may be fixed by council, conditioned for the faithful discharge of their duties; all officers shall render their accounts once a year to councils, and such accounts shall be published.

SECTION 22. That select and common councils shall have power from time to time to change the boundaries of wards and create new wards; that the wards of the said city as now created and bounded shall remain the same after the passage of this act, and as if it had never been passed, and so remain until changed by councils by virtue of the authority herein granted; councils are authorized to

fix the place of holding all general and city elections for said wards, and to divide any wards into election precincts and change the same as often as convenience may require; and it shall not be lawful for any citizen to vote at any of the said elections except within the ward wherein he resides.

SECTION 23. That the qualified electors of each and every ward shall elect at the regular election, each and every year, two inspectors and one judge of elections and assessors, as prescribed by the several acts and supplements of this commonwealth in relation thereto.

SECTION 24. That the mayor shall be elected for a term of three years, and shall be ineligible to said office for three years next ensuing after the expiration of term for which he was elected: *Provided, however*, That the present incumbent shall not be ineligible after expiration of his present term of office for the term next following.

SECTION 25. That any officer elected by the people or by councils, for whose removal from office no other provision has been specially provided, either in this or any other act of assembly, may be removed from such office by a vote of two-thirds of all the councilmen: *Provided*, That no officer be removed except for cause, nor unless furnished with the charges and heard in his defense; and councils shall have power to compel the attendance of councilmen and witnesses, and production of papers when necessary, for the purposes of either party or parties in such trial, and shall proceed to hear and determine upon the merits of the case; and if such officer neglect to appear and make answer to such charges, then councils may declare the office vacant.

SECTION 26. That no alderman of said city, nor any person holding an office of trust or profit under the laws of this commonwealth, or the ordinances of the select and common councils, the emoluments whereof are paid out of the treasury of said city, shall be competent to serve as a member of councils.

CHAPTER THIRD—POWERS AND DUTIES OF COUNCILS.

SECTION 1. That councils shall meet, after organization, at such time and places as they shall be resolution direct; a majority of the members shall constitute a quorum in either branch for transaction of business.

SECTION 2. No member of select or common council shall, during the period for which he was elected, receive any compensation for his services, or be appointed to or be competent to hold any office of which the emoluments are paid from the city treasury, or by fees directed to be paid by any act or ordinance, or be directly or indirectly interested in any contract, the expenses or consideration whereof are to be paid under or by authority of any law, ordinance or resolution of said city, or in any wise interested in the sale or furnishing any supplies or materials to and for the use of said city, or receive any reward or gratuity from any one interested in the sale or furnishing of any supplies or materials to and for the use of said city; and any member violating any of these provisions shall forfeit his membership, and shall be held guilty of a misdemeanor, and on conviction thereof be sentenced to pay a fine not exceeding five hundred dollars.

SECTION 3. Councils shall hold stated meetings, and the president may call special meetings, by notice to the members of their respective councils.

SECTION 4. No vote of council shall be re-considered or rescinded at a special meeting, unless at such special meeting there be present as large a number of councilmen as were present when such vote was taken.

SECTION 5. Said councils shall have full power and authority to make, ordain, constitute and establish such and so many laws, ordinances, regulations and constitutions, provided the same shall not be repugnant to the laws and constitution of the United States or of this commonwealth, as shall be necessary or convenient for the government and welfare of said city, and for enforcing the powers conferred by

this act; and all other acts not hereby repealed, re-enacted or enlarged, and the same to enforce by fines and penalties, and put into execution by constables and other proper officers, whom they shall have power to appoint, and at their pleasure to revoke, alter and make anew, as occasion may require.

SECTION 6. That a knowledge of said laws, ordinances, regulations and constitutions may at all times be had and obtained, such and so many of them as shall not be published in one or more of the public newspapers, or in such other way as councils may direct, within fifteen days after their being severally passed, ordained or established, and also recorded in the office of recorder of deeds in and for the county of Alleghney, (who shall keep a separate book for the purpose, and shall be allowed and paid therefor at the same rate as are allowed by law for recording deeds) within thirty days thereafter, shall be null and void; and before any of said laws, ordinances, regulations and constitutions shall be so recorded, the publication thereof respectively, with the times thereof, sh .ll be proved by the oath or solemn affirmation of some credible person, which said oath or affirmation shall be recorded therewith, and at all times be deemed and taken as sufficient evidence of the time of such publication.

SECTION 7. The councils shall have power, within the city limits, to prevent injury and annoyance from any business, occupation or anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated; to regulate the transportation, storage and keeping of gunpowder, or other dangerous combustiles, and to provide or license magazines for keeping the same; to prevent or punish fast or immoderate riding or driving of horses, or the sale of horses or domestic animals at public auction, on the public highways, or driving or propelling vehicles through the streets; to restrain or regulate the running at large of cattle, horses, swine, sheep or other animals, and to authorize the distraining, impounding and sale of the same, for the penalty im-

posed by any ordinance or regulation thereof, and the cost of proceedings, to prevent the running at large of dogs, and injuries and annoyances therefrom, and to authorize the destruction of the same when at large contrary to any lawful prohibition; to regulate the transportation of articles through the streets, and to prevent injuries to streets and bridges from overloaded vehicles; to establish and regulate markets, and prevent forestalling and re-granting of the same; to provide for the measuring of hay, lumber, wood, coal, lime or any other article for sale; to prevent obstructions in streets or sidewalks; to prevent any riots, noise, disturbance or disorderly assemblages, and to punish those engaging therein; to suppress and restrain disorderly houses, houses of ill fame, billiard tabels, nine or ten-pin alleys, ball alleys and gambling houses and tables, and to authorize the destruction of all instruments or devices used for the purpose of gaming; and to protect the property of the corporation and its inhabitants, and to preserve the peace and good order therein; shall have power to assess, apportion, levy and collect, each year, such tax as may be necessary for the purposes of corporation, on all description of property made taxable by laws of this commonwealth.

SECTION 8. The corporation shall have power to provide for the safe and regular building of houses, stores, manufactures and other buildings within its limits, and to regulate and prevent the erection of any building that may be deemed unsafe or dangerous, or which may not be sufficiently guarded against damage by fire, or which may be for the purpose of maintaining and carrying on therein any business that may be obnoxious, dangerous, annoying or damaging to citizens or property, under such regulations as may be by ordinance directed.

SECTION 9. Councils may regulate or prohibit the erection of wooden buildings.

SECTION 10. Councils shall have power to provide for a supply of water by the construction and regulation of wells, pumps, cisterns, reservoirs or water works; to pre-

vent and punish injuries to the works, and the waste or pollution of the waters; and for the purpose of establishing water works, or for supplying the same with pure water, the corporation may go beyond its territorial limits, and its jurisdiction; to prevent or punish any injury to the water works or pollution to the stream or source of water shall extend beyond its corporate limits.

SECTION 11. Councils shall have power to prevent the burial of the dead within any or such part or district of its territorial limits as it may deem necessary for the health of its inhabitants: *Provided,* That interments within the cemeteries heretofore incorporated may be continued in the manner now authorized by law; and to carry into effect any prohibition of interments, the corporation may not only impose proper fines and penalties, but shall have power to cause any body buried in any prohibited place to be taken up and buried elsewhere.

SECTION 12. Councils shall have power to regulate, license or prohibit all theatrical exhibitions and public shows, and all exhibitions of whatever name or nature, for which money or any other reward is in any manner demanded or received: *Provided,* That lectures on historic, literary or scientific subjects shall not come within the provisions of this section.

SECTION 13. Councils shall have power to cause any lot or lots of land within its limits on which water shall at any time become stagnant, to be raised, filled up or drained, and to cause all putrid substances, whether animal or vegetable, to be removed from any lot or lots, and may for such purposes, from time to time direct that such lot or lots be raised, filled up or drained, or that such putrid substances be removed from such lot or lots by the owner or owners thereof, respectively, in such reasonable time and in such manner as may be directed by a joint resolution of the select and common councils; and it shall be the duty of such owner or owners, his, her or their agent or attorney, after service of a copy of said resolution, or after publication of

the same in some newspaper, to comply with the directions of such resolution within the time therein specified; and in case of failure or refusal to do so it may be done at the expense of the corporation, and the amount of money so expended shall be a debt to the corporation from the owner or owners of such lot or lots, and shall be a lien on such lots, and shall be enforced and collected in same manner that liens for lateral sewers in City of Allegheny are entered upon and collected.

SECTION 14. Councils shall have power to prevent the encumbering or obstruction, in any manner whatsoever, of the streets, sidewalks, lanes, alleys, public grounds or wharfs of said city; to prevent or regulate bathing and swimming in the waters of said city, and to prevent any obscene or indecent exhibition, exposure or conduct; to restrain and punish vagrants, mendicants, street beggars and prostitutes; to prevent or regulate any amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses; to compel all persons to keep the snow, ice and dirt from the sidewalks in front of the premises owned or occupied by them; to prevent or regulate all performances and devices tending to the collection of persons on the streets and sidewalks or public ways, by auctioneers or others for purposes of business, amusement or otherwise; to abate and remove nuisances, and punish the authors thereof by penalties, fine and imprisonments, and to define and declare what shall be deemed nuisances, and authorize and direct the summary abatement thereof; but nothing in this act shall be so construed as to oust any court of jurisdiction; to abate and remove nuisances in the streets or any parts of said city or within its jurisdiction, by indictment, or otherwise; to erect lamps and regulate the lighting thereof; to prohibit, require or regulate the use of locomotive engines within the city, the fuel used in propelling locomotives, the rate of speed, and making up of trains, the blowing of locomotive whistles, erecting and maintaining gates and watchmen at crossings of streets and

public grounds of said city, and to exercise every other power in reference to the running of cars and use of locomotives and of railroad tracks necessary to secure the safety of citizens' lives and property, and the free and unobstructed use of the highways of said city; to regulate the running of horse railway cars, the laying down of tracks for the same, the transportation of passengers thereon and the kind of rail to be used; to do all acts and make all regulations which may be necessary or expedient for the preservation of health and the suppression of disease; to authorize the arrest, fine or imprisonment in the county jail or workhouse, at discretion, of keepers, exhibitors or visitors at any gaming table, gambling house, house for fortune telling, houses of ill or bad repute, or other places of bad device, and all persons who go about for purpose of gaming, or who shall have in their possession any article or thing used for obtaining money under false pretensions, or by not rendering an equivalent for money paid, and all who shall disturb any place where public or private schools are held, either on week day or Sabbath, or places where religious worship is held.

SECTION 15. Councils shall have power from time to time to make and publish, amend or repeal ordinances, not inconsistent with the laws of the commonwealth, for carrying into effect or discharging the powers or duties conferred or required under this or other acts, and every other power necessary for the good government of the city, the preservation of order therein and protection of the lives, health and property of the citizens, and enjoyment of the same.

SECTION 16. Ordinances of the corporation may be enforced by the imposition of fines, forfeitures and penalties on any person offending or violating such ordinances or any of them, and the fine, penalty or forfeiture may be prescribed in each particular ordinance, or by a general ordinance made for that purpose; and the corporation shall have power to provide for the prosecution, recovery and collection of such fines, forfeitures and penalties, and also to provide that all persons who shall refuse or neglect to pay the fine imposed

on conviction of an offense, together with costs of prosecution, shall be imprisoned in the county jail or workhouse, at the discretion of the mayor or aldermen before whom the conviction is had, not, however, exceeding ninety days.

SECTION 17. Fines, penalties and forfeitures and dues imposed by any ordinance may in all cases, in addition to any other mode provided, be recovered before any court of jurisdiction, mayor or aldermen, in the name of the corporation; and in any such suit or action, when pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect of the violation of the ordinance, referring to its title and the date of its passage, and showing as near as may be the time of the alleged violation.

SECTION 18. The mayor of said city shall have jurisdiction, power and authority to recover, summarily or by penal action, as the case may be, any fines and forfeitures inflicted for the violation of the provisions of any ordinance which may be enacted and ordained by the said councils for the government of the said city.

SECTION 19. Any ordinance, when passed by the city councils, shall be signed by the president of each council and countersigned by the clerks.

SECTION 20. The printed copies of the ordinances of the corporation published under its authority, and transcripts of any ordinance, any act or proceeding of councils recorded in any book or entered in any journal kept under the direction of either of said councils, and certified by its clerk, shall be received in evidence for any purpose for which the original ordinance book or journal would be received, and with as much effect; it shall be the duty of the clerk of either of said councils to furnish such transcript, and he shall be entitled to charge therefor at the same rate the clerk of common pleas is entitled to charge for transcripts from the records of said court.

SECTION 21. The city councils shall posesss all the legislative powers granted in this act, and other corporate

powers of the city not herein, or by some ordinance, conferred, in pursuance of this act, or some officer of the corporation; they shall have the control and management of the finance, and of all the property, real and personal, belonging to the corporation.

SECTION 22. No ordinance shall contain more than one subject, which shall be clearly expressed by its title; and no ordinance or section thereof shall be revived or amended unless the new ordinance contains the entire ordinance, or section so amended or revived, and the ordinance section or sections so amended shall be repealed.

CHAPTER FOURTH—POWERS AND DUTIES OF THE MAYOR.

SECTION 1. The mayor of said city shall be its chief executive officer and the conservator of its peace; he shall have and exercise within the city limits the powers conferred on sheriffs of the county to keep the peace within the city limits and suppress disorder, to apprehend any person committing any offence against the laws of the state or the ordinances of the city, and all disorderly persons; he shall keep the corporate seal in his charge, and shall sign all commissions, licenses and permits authorized or granted by the city councils, and such other acts or papers as may require, by ordinance, his certificate; and it shall be his special duty to cause the ordinances of the city to be faithfully and constantly obeyed and observed.

SECTION 2. To recover summarily or by penal action, as the case may be, any fines or forfeitures inflicted for the violation of the provisions of any ordinances that may hereafter be ordained or enacted by council for the government of said city.

SECTION 3. To issue his subpoena in common form to any person or persons in this commonwealth, commanding him or them to appear and give evidence in any or all complaints, matters, indictment, plea or thing of a civil or criminal nature, within his jurisdiction made or depending; and persons thus subpoenaed shall attend accordingly, and give

evidence under such pains and penalties as are by law incurred by any person or persons refusing to attend and give evidence when subpoenaed for that purpose.

SECTION 4. May take acknowledgments of deeds and other written instruments and receive legal fees therefor.

SECTION 5. To promulgate the by-laws and ordinances of the corporation and specially to attend to the due execution and fulfillment of the same; and he shall be entitled to receive, hold and enjoy all the emoluments which by the by-laws and ordinances of the said corporation, are not or may be hereafter annexed or attached to said office of mayor; and for the purpose of enforcing the observance of said laws and ordinances, and preserving the peace and good order of the city, he shall have and exercise all the powers, jurisdictions, authorities, fees and perquisites now exercised and appertaining to an alderman or justice of the peace of Allegheny county: *Provided,* Nothing in this act shall be construed to give him jurisdiction or any authority in civil cases.

SECTION 6. That he is hereby declared to be an official visitor to the penitentiary of the commonwealth, with the same powers and privileges which are conferred by law on other official visitors.

SECTION 7. Before entering upon discharge of his duties he shall be required to give bond with good and sufficient securities, in same manner as other city officers, and in such sum and for such conditions as councils may require by resolution.

SECTION 8. And in addition to the duties required by this act of assembly, and the powers prescribed therein, he shall have such other powers and perform such other duties, which may be compatible with the nature of his office, as are or shall be prescribed by said councils.

SECTION 9. That the mayor of the city of Allegheny is hereby authorized, in case of necessary absence from the city, of his sickness or other temporary disability, to designate one of the aldermen of said city in such cases, who

shall exercise all the powers and discharge all the duties of mayor of said city; and for all the official acts of said deputy the mayor shall be responsible.

THE CONTROLLER.

SECTION 1. He shall have the general supervision and control of all the fiscal affairs of the city, to be exercised in the manner which may be by ordinance prescribed; he shall keep a full and regular set of books, exhibiting accurate statements of all moneys received and expended for or on account of the city corporation, the directors of the poor or the park commission, and of all property owned by the city, and of the income derived therefrom; he shall examine all bills, claims and demands against the city, and shall countersign warrants on the city treasurer in payment thereof for such only as he may find to be lawful, just and due.

SECTION 2. He shall have authority to administer oaths or affirmations to any person engaged in receiving or disbursing the city moneys, and to all persons presenting claims or demands against said city.

SECTION 3. His books and papers shall at all times be open to inspection of any member or members of councils.

SECTION 4. Shall report to councils at such times and in such manner as said councils may, by resolution or ordinance direct, all matters or things necessary to exhibit the true financial condition of the city or of any department of said corporation, or touching any subject upon which said councils may desire information which he can furnish.

TREASURER.

SECTION 1. It shall be the duty of the treasurer to receive and safely keep all moneys accruing to the city corporation, and shall pay out the same on warrants drawn by the mayor and countersigned by the controller, and not otherwise; and he shall keep accurate accounts thereof, and make such reports in relation thereto as councils may by ordinance direct.

SECTION 2. He shall give every person paying money into the city treasury a duplicate receipt therefor, specifying date of payment and upon what account paid.

SECTION 3. All moneys of the city shall be kept separate and distinct from his own moneys, and he is expressly prohibited from using, either directly or indirectly, the corporation moneys or warrants, or bonds, in his custody, for his own use or benefit or that of any other person or persons whatsoever.

ENGINEER.

SECTION 1. The city engineer shall be well skilled in the science of civil engineering and building, and in the practical application thereof.

SECTION 2. In his office shall be kept all plans, plots, records and papers pertaining to streets and public improvements of the city.

SECTION 3. He shall have charge of all improvements of streets, highways, sewers, wharves, landings and public grounds of said city, and shall perform such other engineering services as may be required by councils.

SECTION 4. He shall have charge of all plots, books et cetera, necessary to register and plot all property returned under the registry act of said city.

SECTION 5. He shall appoint such number of assistants and draughtsmen as may be authorized by councils.

CITY SOLICITOR.

SECTION 1. He shall be a regular licensed attorney-at-law, who shall, at the time of his election, reside and have been for two years next previous a *bona fide* resident of said city, and who shall have had a practice in his profession of at least two years.

SECTION 2. He shall act as attorney and counsel for said city in all suits and proceedings by, for or against the city, and in addition to the duties imposed by special acts of assembly, to perform such other in his department as may be required of him.

CHAPTER FIFTH—MISCELLANEOUS AND SUPPLEMENTAL.

SECTION 1. All ordinances, regulations, by-laws, rules and resolutions now in force in the city of Allegheny, and not inconsistent with this act, shall remain in force under this act, until altered, modified or repealed by councils, after this act shall take effect.

SECTION 2. All actions, rights, penalties and forfeitures in suits or otherwise, which have accrued under the act consolidated herein, or other acts, parts of acts or supplements not repealed or changed by this act, and now in force in said city, shall be vested in and prosecuted by the corporation hereby created, as if no change had been made in said charter.

SECTION 3. All property, real, personal or mixed, of any nature whatsoever, now belonging to the city of Allegheny, is hereby vested in the corporation created by this act, and their successors, to and for the use and benefit of said citizens forever; and the officers of said corporation, now in office, shall respectively continue in the same for the term of their election, but shall be governed by this act, which shall take effect from and after its passage.

SECTION 4. All acts, general or special, or parts of acts or supplements thereto, of the city of Allegheny, not repealed by this act, now in force and operation, or passed prior to the passage of this act, and which confer any rights, privileges or powers upon said city or its officers, citizens or any of its commissions, are hereby extended to the corporation created by this act; and all powers, privileges or rights now vested in the city of Allegheny, its officers, citizens or commissions, are hereby vested in the corporation created by this act; and all of said acts of the city of Allegheny shall continue in force and operation as fully and to like effect as if this act had never been passed, and in like manner all acts or parts of acts that have been extended to said city prior to the passage of this act.

SECTION 5. All officers of said city, who are conservators of the peace, by this act, or by authority or appointment of councils, shall have power to arrest or cause to be arrested, with or without process, all persons who shall break or violate the peace, and if necessary, detain such persons in custody in watch house, or other safe place, until hearing or bail is given, and shall have and exercise such other powers as conservators of the peace as councils may prescribe.

SECTION 6. No person shall be an incompetent judge, justice, witness or juror, by reason of his being an inhabitant or free-holder of said city, in any action or proceeding in which the said city shall be a party in interest.

SECTION 7. The said city shall not be required to furnish bail on any appeals, nor required to file any affidavits of claim or defence in any suit or proceedings in law to which it is a party.

SECTION 8. That the bonds of the said city, known as renewal bonds of one thousand eight hundred and seventy, now issued, and all other bonds now authorized to be issued, or to be issued after the passage of this act, for city purposes, shall be exempt from state and local taxation.

SECTION 9. That the councils of said city shall once in every year, cause to be published a just and true account of all moneys which shall have accrued to them in their corporate capacity, during the year preceding such publication, and also of the disposition thereof.

SECTION 10. And to the intent and end that there may not be a failure of justice within said city, it shall be lawful for any constable or constables of the said city, to whom any warrant, under the hand and seal of any alderman, shall be delivered, commanding him or them to take any person or persons who shall have been charged with having committed any offence within said city, and to bring him, her or them before said alderman, or any of them; and he or they are hereby required to execute the same by making the ar-

rest, if the same can be done, at any place within the county of Allegheny, and by bringing such offenders before said alderman, or some of them.

SECTION 10. That it shall be lawful for said Aldermen before whom any complaint, indictment, plea, matter or things of a criminal or civil nature within his or their jurisdiction, shall be made or depending to issue their subpoena in common form, to any person or persons in this Commonwealth, commanding him or them to appear and give evidence therein; and every person to whom the same shall be directed, and on whom service thereof shall be duly made shall attend accordingly, and give evidence under such pains and penalties as are by law incurred by any person or persons refusing to attend and give evidence when duly subpoenaed for that purpose.

SECTION 11. That said councils shall have power to annually levy and collect taxes on the assessed value of all real and personal estate in the city, taxable by any law of the state, as now levied and collected in said city by existing laws; all laws of said city relative to general taxation to be continued in force and operation by the corporation created by this act, with like effect as if this act had never been passed.

SECTION 12. Said councils shall have power to levy and assess upon all the goods, wares and merchandise, and upon all articles of trade and commerce sold in said city, including sales at auction or otherwise, an annual tax for the use of said city, to be levied and collected from the venders of said articles, in same manner as other city taxes are now levied and collected, and as they may think just and equitable.

SECTION 13. That councils of said city are hereby empowered to levy and collect, for the use of said city, an annual business tax, as they may deem just and equitable, on the average yearly deposits of all banks and banking institutions, and on the yearly receipts of insurance companies, and insurance agencies doing business in said city; and in case any cashier, treasurer, secretary or other officer of any cor-

poration, association or company, the business thereof is made taxable under this act, shall feel aggrieved by any assessments made in pursuance of this act, that the treasurer of said city, with the approbation of a majority of the finance committee, shall have power to reduce the said assessment upon such cashier or other officer filing his or their affidavit in the office of the treasurer of said city, stating the amount of business and the amount of the alleged over assessment; which affidavit may be made before the controller of the city.

SECTION 14. If said tax is not paid, then the property of any such corporations and companies shall be subject to levy and sale by any ward constable for payment thereof, upon a warrant to be issued by the city treasurer in same manner as in other city taxes.

SECTION 15. That it shall be lawful for any collector or any constable, upon warrant of collector, to arrest and imprison, in the county jail, any one refusing to pay any personal tax assessed upon him, her or them for city purposes; such imprisonment not to exceed sixty days.

SECTION 16. All acts or parts of acts inconsistent with this act are hereby repealed.

BUTLER B. STRANG,
Speaker of the House of Representatives.

CHARLES H. STINSON,
Speaker of the Senate.

Approved—The thirty-first day of March, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

Exhibit Act No. 2.

(Approved April 20, 1905.)

AN ACT

Providing that where two cities are contiguous, and in the same county, the smaller may be annexed to the larger; prescribing the method of proceeding and the effect of annexation; providing for the division of such enlarged cities into wards, for the apportionment of common council, and for the indebtedness of such cities.

SECTION 1. BE IT ENACTED, &C., That where two cities, situate in the same county, are or may be contiguous to each other, the city having the smaller population, as shown by the last preceding United States census, may be annexed to the city having the larger population, as shown by said census, in the following manner:

The councils of either of said cities may, by ordinance, direct that a petition be filed in the court of quarter sessions of the county in which such cities are situate, or two per centum of the registered voters of either of said cities may present their petition to said court, praying that the city having the smaller population, as aforesaid, shall be annexed to that having the larger population. The court shall order said petition filed, and fix a time for hearing, not more than twenty days thereafter, and direct that notice be given to the mayors of each of said cities and the clerks of councils, and such other notice as the court may deem necessary. Any person interested may file exceptions, prior to the day fixed for hearing. If upon such hearing the court finds that the proceedings are regular and in conformity to this act, it shall order an election to be held in the cities affected, to vote for or against annexation. If the order shall be made more than thirty days and less than ninety days before any regular election, such election shall be held with the said reg-

ular election; but, if not, then a special election shall be ordered to be held not less than thirty days after such order.

For the purpose of this act, cities separated by a stream, river or highway shall be included under the term contiguous.

SECTION 2. The Court shall provide for such notice of the election as it may consider to be proper and legal, and shall order and direct that the county commissioners shall prepare separate ballots for such election, upon which shall be printed, in brief form, a statement of the question so submitted, followed by the words "yes" or "no", and said commissioners shall provide for the placing of such ballots at the polling-places, at the opening of the polls, on the date fixed, and for separate boxes to receive said ballots.

SECTION 3. The election shall be held at the regular polling-places, by the regular election officers, and in case of their absence, or the absence of any of them, their places shall be filled as provided by law; and the said election shall be conducted in accordance with the general election laws of the Commonwealth; and the returns of election shall be delivered to the prothonotary of the court or courts of common pleas of the county, and by him delivered to the judges of the court or courts of common pleas, as provided by law, for computation; and the result thereof shall be certified by the proper officers to the court of quarter sessions having jurisdiction of the proceedings. The expenses incurred by the county commissioners, and other expenses of the election, shall be paid by the city presenting the petition; or, in case the petition shall be by voters, then by the larger city.

SECTION 4. If it shall appear by the vote, when computed and certified as aforesaid, that a majority of all the qualified electors of the two cities, voting upon such question, have voted in favor of annexation, the said court of quarter sessions shall enter a decree annexing the smaller city, in population, to the larger city, in population, determined by the last preceding United States census; but if a majority of said electors, so voting, have voted against annexation, the proceeding shall be dismissed, and the question of annexation

shall not again be submitted to the vote of the electors for a period of less than one year from the date of said election.

SECTION 5. If a decree be entered for annexation, the two cities so voting together shall become one city on the first Monday of April following, and shall bear the name of the city having the larger population at the last preceding United States census. Thereafter, all the citizens of the consolidated cities shall be entitled to, and enjoy and exercise, full rights of citizenship in the said enlarged city; and all property, rights, franchises, and privileges, then by law vested in either and both of said cities, shall be vested in said enlarged city; and all the laws and ordinances of such enlarged city shall be applicable in and to the territory so annexed; and all the rights of creditors and all liens and all the rights of constituent cities to enforce the payment of moneys due them, respectively, at the time of annexation, shall be preserved unimpaired, and the respective cities may be deemed to continue in existence to preserve the same.

SECTION 6. Each constituent city shall pay its own floating and bonded indebtedness, and the interest thereon, as said floating and bonded indebtedness exists at the time of annexation; and for that purpose the city councils of the enlarged city shall levy in each of the cities so consolidated, where an indebtedness existed prior to such annexation, a tax sufficient to pay the interest thereon and to provide for the ultimate payment of said indebtedness, and said tax shall be specially levied upon the subjects of taxation of said constituent cities liable to taxation for such purposes. All moneys accruing from time to time from delinquent taxes due prior to annexation, and all assessments against private property for public improvements, for which the contractors shall have been paid, shall be applied to the indebtedness of the city to which the same shall belong. In case of annexation the court may, if it becomes necessary, appoint three commissioners to ascertain the floating and bonded indebtedness of each of the said municipal subdivisions at the time of annexation. An account shall be taken of all moneys

on hand or receivable, applicable to the payment of the floating indebtedness or bonded indebtedness of the respective municipalities at the date of annexation. Such money shall be applied in payment of the floating or bonded indebtedness of the respective municipalities: Provided, That when an increase in the indebtedness of the enlarged city shall be contemplated hereafter, that the total indebtedness of the constituent cities, together with the indebtedness of the enlarged city, shall be used in determining the amount of indebtedness that may be created, under the provisions of the Constitution relating to municipal indebtedness.

SECTION 7. The court of quarter sessions of the proper county, as soon as practicable, shall divide the entire territory constituting the consolidated or enlarged city into wards, and shall fix each ward's representation in common council. In dividing said city into wards, no election district shall be divided so that portions thereof will be in different wards. For the purpose of dividing said city into wards, and fixing the representation in common council, said court shall, immediately upon entering the decree for annexation, appoint five (5) persons as commissioners. It shall be the duty of said commissioners, or any three (3) of them, in dividing said city into wards, to examine the territory, receive evidence, and make a draft showing the divisions proposed; and in fixing the representation in common council of said enlarged city, it shall be the duty of said commissioners, or any three (3) of them, to use the ratio established by law, using also the last returns of ward assessors of the cities to the county commissioners, so far as the same may be applicable. The commissioners so appointed, or any three (3) of them, shall make their report to the said court within sixty (60) days from the date of their appointment; and thereafter the court shall make such order thereupon as to it shall appear just and reasonable, but the decree of the court shall not affect the boundaries of any school, or sub-school districts in either of said cities. The costs of these proceedings, including proper

compensation to commissioners, shall be taxed against the enlarged or consolidated city.

SECTION 8. In case the decree for annexation shall have been entered, and the enlarged city shall have been divided into wards, and the representation in common council shall have been fixed, as aforesaid, at least ninety (90) days before said first Monday of April, when said enlarged city shall go into effect, the terms of all councilmen in such annexed city and of the city to which such city is annexed shall cease and determine on said first Monday in April, following the decree for annexation; and their successors in the select and common councils of the enlarged city shall be elected at the February election, preceding said first Monday of April, under the provisions of the laws regulating the election of such councilmen of cities of the class to which said enlarged city belongs; whose terms of office shall begin, and who shall organize, in the manner provided by law, on the first Monday in April next ensuing their election, and their terms of office shall end on the first Monday of April of the year to which they shall be entitled to serve, under existing laws, if elected at said February election, preceding said first Monday of April after which the decree for annexation has been entered. In case the decree for annexation shall not have been entered, and the enlarged city shall not have been divided into wards, and the representation in common council shall not have been fixed, as aforesaid, at least ninety (90) days before the said first Monday of April, the time fixed for said enlarged city to go into effect, then the terms of all councilmen, as aforesaid, shall cease and determine on the first Monday of April following the date at which such enlarged city goes into effect; and their successors in the select and common councils of the enlarged city shall be elected at the February election next preceding the time at which their predecessors' terms of office shall cease and determine, and they shall organize and their terms of office shall end as hereinbefore provided.

SECTION 9. The members of select council, so elected, shall divide themselves, by lot or otherwise, into classes as nearly equal in number as possible. Where, under existing laws, select councilmen are elected for two or four years, there shall be two classes; one shall serve for one or two years, respectively, and the other two or four years, respectively. Where elected for three years, there shall be three classes; to serve one, two and three years, respectively; and thereafter all elections shall be for the regular term provided by law.

SECTION 10. If a decree for annexation be entered by the court, as aforesaid, and the terms of office of the mayors of the constituent cities shall expire on the first Monday of April next following said decree, the mayor of the enlarged city shall be elected at the first municipal election following said decree of annexation; otherwise, the mayor of the city having the greater population at the last United States census shall be the mayor of the enlarged city until the next election; and shall have the qualifications of mayors for cities of the class of said enlarged city.

SECTION 11. The controller of the enlarged city shall be the official holding the office of controller of the said city having the greater population at the last preceding United States census, and said controller shall serve for the entire term for which he was elected. The controller of the smaller city in population, determined as aforesaid, shall be employed as an assistant to the controller of the enlarged city, and shall be subject to his orders for the remainder of his said term of office.

SECTION 12. Nothing in this act shall be construed to affect the common school laws, as applicable to either city at the time of annexation. Any duties imposed upon the councils of each city by the common school laws, applicable to the respective cities before annexation, shall be performed by the councils of the enlarge city for the respective districts.

Approved—The 20th day of April, A. D. 1905.

SAML. W. PENNYPACKER.

Office Supreme Court, U. S.
FILED.
OCT 14 1907
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

No. 264 OCTOBER TERM, 1907.

D. HUNTER, Jr., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error.

vs.

CITY OF PITTSBURGH, Defendant in Error.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

BRIEF OF APPELLANTS,

In Support of the Assignments of Error to the Judgment of the Supreme Court of Pennsylvania.

JOHN G. JOHNSON,
WILLIAM A. STONE,
Attorneys for Appellants.

Smith Bros. Co. Inc., Franklin Print. 412 Grant Street, Pittsburg.

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Brief of Appellants.

In Support of the Assignments of Error to the Judgment of the Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania in this case, through Justice Brown delivering the opinion in disposing of our assignment of error that the law in controversy was in conflict with the Fourteenth Amendment of the Constitution of the United States, says:

> "The method of consolidation is said to be unconstitutional, because it is not by 'due process of law,' 'in that it permits qualified electors of the larger city to

overpower or out-number those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified voters or electors of the lesser city.' This is completely answered in the following extract from the opinion of the learned Judge speaking for the Superior Court: 'In determining whether this act is contrary to that "due process of law" guaranteed by the federal constitution, in providing that the electors of the consolidated territory shall determine the question of annexation of the lesser city instead of permitting the majority of the electors of the lesser city to decide it, we have many adjudicated cases which warrant the action taken by the legislature. The words 'due process of law,' as taken from Magna Charta and incorporated in the constitution,' were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principle of private rights and distributive justice.' In each particular case the words mean 'such an exercise of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs: *Cooley's Constitutional Limitations,* 434."

Judge Orlady, who delivered the opinion of the Superior Court, in this connection referred to *2d Kent's Commentaries,* 278-279; *Cooley's Constitutional Limitations,* 228; *Ervine's Appeal,* 16 Pa., 256; *Philadelphia vs. Fox,* 64 Pa. St., 165; *Glover Municipal Corporations* 1; *Commonwealth vs. Moir,* 199 Pa. St., 534.

The cases thus referred to, but reiterate and copy the declaration of Judge Cooley. This we do not question; but neither in Judge Cooley's Constitutional Limitations, nor in

any of the cases cited by Judge Orlady do we find any authority for annexing a smaller municipality against its will to a larger one by a majority vote of the two. On the contrary, such legislation is directly in defiance of Judge Cooley's definition because annexing a smaller city to a larger one, by a majority vote of the two, is not "such an exercise of the powers of government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

We cite the ruling of the Supreme and Superior Courts in this case to show that they considered and decided the federal questions here involved, and will endeavor to sustain our contention that the decision of the federal question was erroneous.

Is the Act of Assembly in controversy, approved February 7th, A. D. 1906, "due process of law" as contemplated by the Fourteenth Amendment of the Constitution of the United States?

"Due process of law" has always been held to be just, fair, and reasonable.

Mr. Justice Field, in *Hagan vs. Reclamation District*, 111 United States Reports, 701, has well defined it in these words:

> "It is sufficient to observe here that by due process is meant, one which following the forms of law is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained, and whenever it is necessary for the protection of the parties it must give them an opportunity to be heard re-

specting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights."

It is no answer to our assertion that the Act of Assembly in controversy is not "due process of law," to say that the Legislature of Pennsylvania without any vote of the citizens could have passed an act consolidating Pittsburgh and Allegheny. Without admitting such power in the Legislature under the Pennsylvania Constitution, it is sufficient to say that the Legislature did not so enact.

Under what was enacted the Court could hold that there had been a legal consolidation only if a majority vote had been polled in favor of it. The question here arises under the law that was passed, not under one which might have been, but was not, passed. The power of the Legislature to consolidate directly without a vote under the Constitution of the State is not a reply to consider. The merits of the law which has been passed, cannot be determined by what the Legislature might have done. If the vote of the majority in the two cities had been against consolidation, there could have been no consolidation.

What we must consider is the power the Act of Assembly which was enacted, gave the Court of Quarter Sessions. It was empowered to decree consolidation only in case of a majority vote. The Legislature having conceded the people of the two cities the right to determine consolidation only in case of a majority vote, we must look at the law to determine whether that law is "due process," or right process;

in its examination we must make the same investigation this Court and other courts have always made, viz:—

1st. Is the law just, fair and reasonable?

2d. Is it usual for legislative bodies to pass laws for the consolidation of municipalities unless by a majority vote of each of the municipalities to be consolidated?

FIRST.

Is the law just, fair, and reasonable? This Court decided in *Smythe vs. Ames,* 169 U. S. Rep. 466, that the Courts and not the Legislature must determine whether the law is reasonable; and that if it be unreasonable, it is not due process of law.

See also, on reasonableness of the law, *Cotting vs. Kansas City Stock Yards Co.,* 183 U. S. Rep. 79.

The scheme, or trick, of the law is apparent. As was expected by the framers of the law that Allegheny would vote against consolidation, they determined to neutralize the vote of Allegheny by the larger vote of Pittsburgh. The vote which was taken, under the law which disfranchised the citizens of Allegheny is before the Court. The law gave them a vote, but by a scheme which destroyed it. Is legislation which thus destroys the vote it allows fair, just and reasonable? The Supreme Court of Pennsylvania has so said. Will this Court affirm what has been said?

The case of *Yick Wo. vs. Hopkins,* 118 U. S. Reports, 356, arose under a writ of error to the Supreme Court of California, in which the question for consideration was whether an ordinance of San Francisco, vesting the granting or with-

holding of a license to keep a laundry, in the Board of Supervisors, was due process of law. Mr. Justice Matthews, in delivering the opinion of this Court said:—

> "Our jurisdiction is limited to the question, whether the plaintiff in error has been denied a right in violation of the Constitution, laws, or treaties of the United States. The question whether his imprisonment is illegal, under the Constitution and laws of the State, is not open to us. And although that question might have been considered in the Circut Court in the application made to it, and by the court on appeal from its order, yet judicial propriety is best consulted by accepting the judgment of the State court upon the points involved in that inquiry.
>
> That, however, does not preclude this Court from putting upon the ordinances of the supervisors of the county and city of San Francisco an independent construction; for the determination of the question whether the proceedings under these ordinances and in enforcement of them are in conflict with the Constitution and laws of the United States, necessarily involves the meaning of the ordinances, which, for that purpose, we are required to ascertain and adjudge."

Speaking of the political procedure of voting, he said:

> "In reference to that right it was declared by the Supreme Judicial Court of Massachusetts, in *Capen vs. Foster*, 12 Pick., 485, 489, in the words of Chief Justice Shaw, 'that in all cases where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power, to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designated to secure and facilitate the exer-

cise of such right, in a prompt, orderly and convenient manner;' nevertheless 'such a construction would afford no warrant for such an exercise of legislative power, as, under the pretense and color of regulating, should subvert or injuriously restrain the right itself."

In *Capen vs. Foster,* 12 Pick., 488, the Supreme Court of Massachusetts, speaking through Mr. Chief Justice Shaw, dealt with an Act of Assembly, such as the act now before this Court. He said that while it is in the province of the Supreme Court, and the Courts of the State, to regulate the manner in which elections shall be held, "nevertheless such a construction would afford no warrant for such an exercise of legislative power, as, under the pretense and color of regulating, should subvert or injuriously restrain the right itself."

The law in controversy is one providing for the consolidation of two cities, or the annexation of the lesser to the larger city, by the majority vote of the two cities. The larger city was almost unanimously in favor of annexing the smaller. The smaller city was almost as strongly opposed to such annexation. Under the color of giving the citizens affected a vote to determine the question a scheme was adopted and put into the law, which restrained the right to determine such by vote.

If this were the last case of municipal consolidation likely to arise, and if the decision could be rested upon the ground of expediency, the present case would be comparatively unimportant; but the effect of the decision will not end with its disposition. A precedent will be established by which larger municipalities will be permitted to swallow smaller ones.

The decision if affirmed will determine that legislatures may pass laws for the consolidation of cities and counties, bor-

oughs and townships, whenever a majority of the votes in a part of the territory to be affected shall so decide by a popular vote, and although the votes of the other part are unanimously opposed, if the part which favors consolidation is sufficiently populous, a great city could, under such legislation, extend its boundaries over the whole state.

Consolidation might result in a large increase of taxes. It might result in partial confiscation of property.

How can one municipality thus kidnap another in mockery of justice? It is not just process of law; it is not fair process of law; it is not reasonable process of law; and is therefore not "due process of law."

In inquiring whether an Act of Assembly is "due process of law," we must determine what effect such a law may have upon other municipalities coming under its provisions.

Your approval of the Act of Assembly in controversy by holding that it is due process of law, and not in conflict with the fourteenth amendment of the Constitution of the United States, will establish a most dangerous precedent. Any Legislature in any state can pass a similar law, because if the one in question does not conflict with the Constitution of Pennsylvania, it will not conflict with the Constitution of any other state, for the constitutions of none afford better safeguards against special legislation than does the Constitution of Pennsylvania.

But whether or not other states shall pass similar laws if this law be approved by this Court, in Pennsylvania at least all contiguous cities will be menaced.

The eleventh section of the law provides for the annexation of smaller cities to larger cities situate in different coun-

ties, by a majority vote. But while it provides that the smaller city shall become and be a part of the larger city, it does not provide that the territory of the smaller city shall become a part of the territory of the county in which the larger city is situated.

Now, suppose that in Pennsylvania, or in any other state, which shall pass a similar law, the line between two counties shall happen to be a river, upon each bank of which shall be a city, which shall be the county seat of its county, and that the larger of the two cities shall have twice the number of votes of the smaller city. Under this law the larger city can absorb the smaller city. The courts will not be able to interfere, as their jurisdiction is limited to the inquiry as to whether the petition and proceedings are in conformity to this law. This curious state of things, would result: The smaller city would become a part of the larger city, subject to its municipal control and laws, while still remaining part of the other county. The smaller city would lose its name and the larger city would be the county seat of two counties. That portion of the smaller city taken into the larger city would be subject to the same municipal laws, but would be subject to the control of different county officials. Under the law the same ward might be composed of territory in each county and Ward Constables would have to make returns to both County Courts. But if an arbitrary line shall divide the two counties, the confusion would be much greater.

The Allegheny River divides the cities of Pittsburgh and Allegheny. It has a width of about one thousand feet. Suppose the river was the boundary line between Allegheny County and Butler County, and that Allegheny was the County Seat of Butler County, the two cities could be consolidated under this law, and all of the difficulties we here suggest would arise.

Can you say that an Act of Assembly under which it is possible, through the local desire for expansion, to bring about such confusion and conflict, is proper, wise and beneficent, wholesome and beneficial to the people to be affected? If not, it is not "due process of law."

We submit one case where there was a law similar to the present. In *People vs. Solomon*, 51 Supreme Court of Illinois Report, page 37, the Legislature had passed a law authorizing the towns of South Chicago, Hyde Park and Lake to vote to create a park, a majority vote to decide. A majority vote for the park was cast in each town. On mandamus by the Park Commissioners to compel the levy of a tax to pay bonds for the Park, the Supreme Court of Illinois *inter alia*, said:

> "It is further objected that the fact that a majority of the votes of the three towns has been given to this Act, imparts to it no additional validity for by the scheme of the Act, it might be that one of the townships by its large vote could dominate over the other two, and thus subject the minority town to an onerous burden without their consent. This might be so, and if so the case would be like the case of Lincoln park in which we held it contrary to the plain behests of the constitution to impose a local burden upon an unwilling people without first obtaining the consent of the people to its imposition, when a similar case shall arise, the decision will doubtless be the same, but the facts admitted by the pleadings show a majority of the votes of each of the towns was cast in favor of the Act."

The *Lincoln Park Case*, 51 Illinois Supreme Court Reports holds that an Act of Assembly imposing a tax on Chicago to establish a park is void because done without the consent of the people or their representatives.

SECOND.

a. Is it usual to consolidate cities in the way adopted in the present case? Have other municipalities been consolidated by a majority vote; and first, have they been thus consolidated in Pennsylvania, for if the practice in Pennsylvania, is in accord with this Act, it may be said to be the usual way in that State, and that in Pennsylvania such action will be "due process of law."

In *Fallbrook Irrigation District vs. Bradley,* 164 U. S. Rep. 168, referring to *Kelly vs. Pittsburgh,* 104 U. S., 78, this Court through Mr. Justice Peckham, delivering its opinion, said:—

> "Due process of law is not violated, and the equal protection of the laws is given, when the ordinary course is pursued in such proceedings for the assessment and collection of taxes, that has been customarily followed in the state, and where the party who may subsequently be charged in his property has had a hearing or an opportunity for one, provided by the statute."

Thus the converse must be true; that where the proceedings pursued are not those customarily followed in the state, the law authorizing the proceedings is not due process of law.

In *Turpin vs. Lemon,* 187 U. S. Rep. 57, 58 and 59, following *Bells Gap R. R. Co. vs. Pennsylvania,* 134 U. S. Rep. 232, this Court held:—

> "And it would appear that the fourteenth Amendment would be satisfied by showing that the usual course prescribed by the state laws required notice to the tax payers, and was in conformity to natural justice. It in-

volves no violation of due process of law when it is executed in accordance to customary forms and established usuages or in subordination to the principles which underly them:"

We find in Pennsylvania no precedent for this law. On the contrary whenever consolidation has been effected by a vote of the people, each municipality has been given a separate vote, which separate vote if against consolidation, determined that the municipality so voting against consolidation should not be included in the scheme.

When what was known as East Liberty, or East End, and the Southside, formerly Birmingham, were annexed to the City of Pittsburgh, it was done under an Act of Assembly approved April 6th, 1867, P. L. 846. This Act provided that that portion of the present City of Pittsburgh, known now as Southside, and that portion now known as East End, and Allegheny City, lying on the north of the Allegheny River should each have a separate vote, and that if either of the said three divisions of territory should vote in favor of consolidation by a majority vote, it should be consolidated or annexed to the City of Pittsburgh, but if either of the three divisions of territory should vote against it, then that such territory should not be so annexed. While the Southside and East End voted in favor of annexation, and were annexed, Allegheny City voted against it and was not.

The Constitution of Pennsylvania, Article 15, Section 1, provides as follows:

> "Cities may be chartered whenever a majority of the electors of any town, or borough having a population of at least ten thousand shall vote at any general election in favor of the same."

The Legislature of Pennsylvania passed an Act entitled, "An Act dividing cities of this state into three classes, etc.," approved May 23rd, 1874, P. L. 230, and in the 14th section of that Act, it is provided that cities of the third class may become incorporated as follows:—

"Section 14. Cities of the third class shall be chartered whenever a majority of the electors of any town or borough or of any two or more contiguous towns or boroughs, having a population of at least ten thousand shall vote at any general election in favor of the same, and whenever the corporate authorities of any such town or borough shall, by resolution thereof, duly passed, and recorded among the minutes thereof, determine to hold an election upon the question of becoming a city, they shall give notice thereof, during at least four weeks immediately prior to the next general election, in all of the newspapers published in said town or borough, that such an election will be held; and at the said general election it shall be the duty of the Inspectors and Judges of elections within said town or borough, to receive tickets, either written or printed, from the electors therein, qualified to vote by the constitution of this state, labeled on the outside 'city charter,' and containing on the inside 'for city charter' or 'against city charter,' and to deposit said tickets in a box to be provided for that purpose; and the tickets so received shall be counted and a return thereof made to the clerk of the court of quarter sessions of the peace of the proper county, and a duplicate return thereof to the secretary of the commonwealth, each duly certified in the manner required by law; and in receiving and counting, and in making returns of the votes cast, the inspectors, judges and clerks of said election shall be governed by the laws of this commonwealth regulating general elections; and all the voters, inspectors, judges and clerks voting at

and in attendance upon the elections to be held under the provisions of this act, shall be subject to the penalties imposed by the election laws of this commonwealth.

Section 15. Whenever by the return of elections in any town or borough aforesaid it shall appear that there is a majority against a city charter no further proceedings shall be had, and it shall not be lawful to hold another election upon that question in that town or borough for three years thereafter; if it shall appear by the said returns that there is a majority in favor of a city charter, the governor of this commonwealth shall issue letters patent, under the great seal of the state, reciting the facts, defining the boundaries of the said city, and constituting the same a body corporate and politic, by the name of the city of ..... and the corporate authorities of any such town or borough shall, within sixty days after such election, furnish to the secretary of the commonwealth the necessary information in regard to the boundaries of the said city."

Here then is the first declaration of the Legislature of Pennsylvania, under the Constitution of 1873.

The provision in the Act of Assembly above cited, was intended to carry out the provision in the Constitution for creating cities out of boroughs and townships, and it clearly provided that it could only be done by the majority vote of the voters of the territory to be incorporated into a city.

It was alleged by the appellees in their argument in the State Supreme Court, that this Act of Assembly authorized such incorporation into cities of the third class, of boroughs and townships where there was more than one, by a majority vote. Such is not the case. A careful reading of this section clearly shows that while two or more boroughs or towns

may become a city of the third class, yet there must be a majority vote in each town or borough in order to create one or two boroughs into a city of the third class, because section 15 of said Act of Assembly provides:

> "Whenever by the returns of elections in any town or borough aforesaid, it shall appear that there is a majority against a city charter, no further proceedings shall be had, and it shall not be lawful to hold another election upon that question in that town or borough for three years thereafter."

If then, two boroughs desire to become a city of the third class, there must be an election in each, and if the returns of election in either one of the two should show that there is a majority against a city charter, no further proceedings can be had, and it will not be lawful to hold another election for three years.

The learned counsel of the appellees contended that the words in the Fourteenth section, namely: "Whenever a majority of the electors of any town or borough, or of any two or more contiguous towns or boroughs," meant a majority of the two. Such is not the meaning of the Act of Assembly, and it would be in violation of the Constitution of the State if such a construction were put upon it, because the Constitution clearly provides in Article 15, Section 1: "That cities may be chartered whenever a majority of the electors in any town or borough having a population of at least ten thousand shall vote at any general election in favor of the same," clearly meaning that if a majority of the electors of any one town or borough shall vote against said charter, they shall not become a city or part of a city.

The Act of Assembly of Pennsylvania, approved June 8th, 1874, P. L. 279, entitled "An act for the annexation

of boroughs or townships, or parts of townships, to adjacent cities," provides—

"That any borough or township, or part of a township may be annexed to any adjacent city, in the following manner, viz: In the case of a borough, the town council may pass an ordinance for such annexation, whenever three-fifths of the taxables of such borough shall present a petition asking therefor; in the case of a township or part of a township, three-fifths of the taxables shall present a petition to the council for said city, asking for such annexation, which said petition, in case a part only of a township desires to be admitted shall be accompanied up a plot of the same.

Section 2. Upon the presentation to the councils of such city of a certified copy of the ordinance, in the case of a borough, or of the petition, in the case of a township, or of the petition and plot, in the case of a part of a township, said councils may, by ordinance, annex such borough, township, or part of a township.

Section 3. That the action of said city council shall be final and conclusive, unless an appeal therefrom be taken within ten days to the court of quarter sessions of the county; upon such appeal the clerks of said city councils, and said town council, shall certify to said court all the papers and proceedings in the case, whereupon said court shall examine and inquire, and if the proceedings appear to have been in conformity with law, shall approve the same.

Section 4. Any borough, township, or part of a township annexed to any city under this act, shall immediately be arranged by the councils of said city for the purpose of representation in the said councils."

Here we have an Act of Assembly providing for the annexation or consolidation of a borough or township, or part

of a township to an adjacent city; but only in case three-fifths of the taxables of said borough or township, or part of a township, shall petition for the same; and again, that the proceedings shall be inquired of in the court of quarter sessions, and that court shall determine if the proceedings appear to have been in conformity with law.

The Act of Assembly of Pennsylvania entitled "An Act enabling the Burgess and council of any borough or incorporated town by ordinance to annex to the borough or incorporated town, adjacent territory upon petition of a majority of the freeholders thereof," approved April 22, 1903, P. L. 247, provided:—

> "That the burgess and council of any borough or incorporated town shall have power, on petition of a majority of the freehold owners of any lot or outlots of any section of land lying adjacent to said borough or incorporated town, to declare, by ordinance, the admission of such lots or outlots." * * *

This Act was intended to annex to the borough, or incorporated town, a plot or section of lots or a lot lying adjacent, but the majority of the owners of such lot, plot, or plan of lots were given the right to determine whether their lot or lots should be so annexed, and until such majority petitioned for annexation, the borough or incorporated town had no voice or right of action in the matter.

The next Act of Assembly in Pennsylvania on the subject of annexation or consolidation of municipalities, was passed in 1903, approved April 28th, entitled "An Act for the annexation of any city, borough, township, or part of a township, to a contingnous city, and providing for the indebtedness of the same."

This Act provided for the annexation of cities, but it gave to the city, borough or township to be annexed, the right of a separate vote, the right to determine for itself whether it would be annexed or not.

We come then to the Act of Assembly approved April 20th, 1905, P. L. 221, entitled: "An Act providing that where two cities are contiguous, and in the same county, the smaller may be annexed to the larger, etc."

This Act of Assembly, the Supreme Court of Pennsylvania, in *Sample vs. City of Pittsburgh*, reported in 212 Pa. St., 33, declared to be unconstitutional.

Then we have the Act of Assembly in controversy, approved February 7th, 1906, P. L. Extraordinary Session, page 7.

Such is a brief history of the Acts of Assembly of Pennsylvania, on the subject of consolidation of municipalities.

It is submitted that the Act now in controversy is unusual and out of the ordinary course of legislation for the consolidation of municipalities in the State of Pennsylvania.

It may be well next to examine the provisions of the Constitution of Pennsylvania relating to elections.

Article 1, section 5, of the Constitution of Pennsylvania says—"Elections shall be free and equal and no power civil or military shall at any time interfere to prevent the free exercise of the right of suffrage."

United States Senator Charles R. Buckalew, of Pennsylvania, was a member of the Constitution Convention which

adopted the present Pennsylvania Constitution of 1873. In his work, *Buckalew on Constitution of Pennsylvania*, page 10, he says:—

> "The words 'free and equal' in the declaration of rights excludes not only all invidious discriminations between individual electors or classes of electors, but also between different sections or places in this State."

This section of the Constitution was not called to the attention of the Supreme Court of Pennsylvania, in the argument of this case, and so far as we know that Court has never passed upon or construed it. But the Supreme Court of the United States is not precluded from considering this section of the Pennsylvania Constitution, in passing upon the question whether the Act in controversy is due process of law, as contemplated by the Fourteenth Amendment of the Constitution of the United States.

This Court said, in *Pleasant Township vs. Aetna Life Insurance Company*, 138 Pa. St., 67,—

> "As stated in *Burgess vs. Segilman*, 107 U. S. Rep. 20-33, 'Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. * * * Such established rules are regarded by the Federal Courts, no less than by the state courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment.'

If Senator Buckalew was right in his definition of Article 1, section 5, of the declarations of rights in the Pennsyl-

vania constitution, that the words "free and equal" in said section, exclude all invidious discrimination between different sections or places in the state, the question whether the law in controversy does discriminate between Pittsburgh and Allegheny, is fairly before us.

It provides that the two cities shall be consolidated after a majority vote of their electors. This is an invidious discrimination, because the larger number of voters in Pittsburgh could, and did, outvote the smaller number in Allegheny.

Article 8, section 7, of the Constitution of Pennsylvania, provides that—

> "All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the state, but laws regulating and requiring the registration of electors may be enacted to apply to cities only; provided that such laws be uniform for cities of the same class."

This provision of the Constitution was not called to the attention of the Supreme Court of Pennsylvania in this case, and so far as we know has never been construed by that court. It is then for the consideration of this Court, under the authority of *Pleasant Township vs. Aetna Life Insurance Company*, 138 U. S. Rep. 67.

Hence, we inquire, is the law in controversy uniform with other laws referring questions to the vote of the people throughout the state?

Article 9, section 8, of the Constitution of Pennsylvania provides:

> "The debt of any county, city, borough or township, school district or other municipality or incorporated dis-

trict except as herein provided shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt or increase its indebtedness to an amount exceeding two per centum upon such valuation of property without the assent of the electors thereof at a public election in such manner as shall be provided by law; but any city, the debt of which exceeds seven per centum of such assessed valuation, may be authorized by law to increase the same three per centum in the aggregate at any one time upon such valuation."

The Act of Assembly providing for elections to determine whether municipal indebtedness shall be increased or not, carrying out this constitutional provision, gives a vote to each elector, but the Act of Assembly in question does not give to the electors of Allegheny any voice in the question of consolidation at all.

If the Act of Assembly providing for a vote to increase indebtedness of municipalities had in it a scheme to disfranchise a portion of the voters by providing that none should vote who owned real estate, it would be similar to the one in controversy. It makes no difference whether the scheme in the law excludes a class of voters or ingeniously inserts a provision that renders their vote a nullity. The law in controversy, being unlike other laws referring questions to the vote of the electors to be affected thereby, is therefore not uniform with other similar laws, and is therefore not due process of law and conflicts with the Fourteenth Amendment of the Constitution of the United States.

b. Let us now inquire what has been the practice in other states.

When Greater New York was consolidated the different territories voted on the question of consolidation, and those separate municipalities voting against consolidation were not consolidated. The City of Mt. Vernon voted against consolidation with New York and preserved its separate municipality.

When the City of Boston was enlarged, each municipality was given the right to determine whether it should be embraced within the consolidation, and the separate municipalities which voted against it were not included in the consolidated city. The Borough of Brookline is within the City of Boston, but it maintains its separate municipality because it voted against consolidation with Boston.

In the enlargement of Chicago, the different municipalities were given a separate vote. So it was in St. Paul, Providence, Detroit, Newark, Kansas City and Baltimore.

In all instances where these cities were enlarged by the annexation of contiguous territory, such contiguous territory was given the right to decide for itself by a separate vote, whether or not it would be annexed to the larger city.

In Indianapolis the same rule prevailed, and there is within that city a town called Woodruff Place, which was given the right by separate vote to consolidate with Indianapolis, and which voting against consolidation preserved its separate municipality.

A recent Act of Congress permitted Arizona and New Mexico to have a separate vote to determine whether they should become one state. New Mexico voted against a union with Arizona and it was then unnecessary for Arizona to vote, because under the privisions of the Act of Congress, New Mexico having polled a majority vote against becoming a

state with Arizona, that settled the question, and there could be no admission of New Mexico and Arizona as a state.

When we say that this procedure in the Act of Assembly, in controversy, proposing a majority vote of the two cities, is unusual, we mean that there has never before been such a proposition in legislation, providing for the annexation of a smaller city to a larger one by a majority vote of the two territories.

When England formed its union with Ireland, the latter was given a separate vote. History records numerous instances where one country has conquered another and annexed its territory by force of arms, but it records no Act of legislative bodies enforcing the annexation of a smaller city to a larger one, by and through a majority vote of the two.

Therefore it cannot be said to be usual to consolidate by a majority vote of the municipalities to be united. One of the tests to apply, to determine whether the law is, or is not, "due process of law," is to inquire whether the method prescribed therein is the usual and customary method.

In the case of *Roller vs. Holly*, reported in 176 U. S. Reports, 398, this Court had under consideration this question.

The Legislature of the State of Texas passed an Act of Assembly providing for the service of process on non-residents, giving them five days' notice. The Supreme Court of Texas declared that it was not in conflict with the Constitution of Texas. On writ of error from this Court to the Supreme Court of Texas, this Court held that the law giving five days' notice to non-residents in a summons, was so unreasonable, so unjust and so unusual that notwithstanding the decision

of the Supreme Court of Texas, it must be held not "due process of law," but in conflict with the Fourteenth Amendment of the Constitution of the United States. In that case this Court dwelt upon the length of notice given defendants under like circumstances in other states, and held that the Act of Assembly under consideration was not "due process of law," and was in conflict with the Fourteenth Amendment of the Constitution of the United States.

See *French vs. Barber Asphalt Paving Co.*, 181 U. S. Rep., 324, where many cases are cited on reasonableness of a law to make it "due process" under the Fourteenth Amendment.

The question for this Court here to determine is, not whether Pittsburgh and Allegheny ought to be consolidated; not whether the Legislature has the power to consolidate them by an Act of Assembly; but whether the method adopted in the Act in controversy is reasonable, usual, customary and just. This question must be determined by this Court regardless of the view the Supreme Court of Pennsylvania took, because, if the method adopted for such consolidation is not reasonable, usual, customary and just, it is not "due process of law." In other words, this Court has before it, the construction of the law, and it must determine whether it is reasonable, customary and just; and if it is not, then it must hold it not to be "due process of law," and to be in conflict with the Fourteenth Amendment.

The law may or may not be in conflict with the Constitution of the State of Pennsylvania. This Court is not called upon to determine that question. The Legislature of Pennsylvania may or may not have the power by an arbitrary Act of Assembly to consolidate the two cities. This Court is not called upon to determine that question. It is simply

called upon to construe this law, which is the method adopted for the consolidation of these two cities. Is this method due process of law? Is it usual? Is it customary? Is it reasonable? Is it just? Is it in conflict with the Fourteenth Amendment of the Constitution of the United States?

The learned counsel for the appellees in this case rely much upon the case of *Kelly vs. Pittsburgh,* 104 U. S. Reports, 78. That case does not raise the present question. This Court was then asked to say whether a rural property owner, living within the territory that voted a majority for consolidation, could have his property taxed for city purposes. That territory was united to Pittsburgh under the provisions of the Act of Assembly of Pennsylvania approved April 6th, 1867, P. L. 846, which gave the voters in the territory to be annexed to Pittsburgh the right to determine by a separate vote. *Supra.*

In *Forsythe vs. Hammond,* 166 U. S. Reports, 506, referring to the case of *Kelly vs. Pittsburgh,* this Court said:

> "It is for the State to determine its political subdivisions, the number and size of its municipal corporations, and their territorial extent. But we do not mean to hold that in the creation or change of boundaries there may not be action taken by the State which involves a trespass upon rights secured by the Federal Constitution."

The Forsythe case was one which involved adverse citizenship, and this Court held that the plaintiff by allowing judgment in the State Court was concluded. But in the opinion it is clearly said:—

> "While it is for the State to determine its political subdivisions, etc. * * * we do not mean to hold that in the creation or change of boundaries there may

not be action taken by the State which involves a trespass upon rights secured by the Federal Constitution."

In holding that it is for the State to determine its political sub-divisions, as was done in *Forsythe vs. Hammond, supra,* this Court has clearly in that case reserved the right to pass upon the method adopted by the State in determining its political divisions.

Is the action taken by the State through the law in controversy, a trespass upon the rights of the appellants secured by the Federal Constitution? Is the method laid down for the consolidation of these two cities, a trespass upon rights secured by the Federal Constitution? Is the provision in the law, that consolidation or annexation may be effected by the majority vote of the two municipalities, a trespass upon the rights of the City of Allegheny and the other appellants? Has a method been pursued that is fair, reasonable, usual and customary? Is the decision by a majority of the voters of the two municipalities fair, reasonable, usual and customary, when viewed in the light of other similar matters? Can a method be upheld which is not only unusual, but not customary and unfair, and which absolutely subverts, destroys the voice of Allegheny and its voters, on the question of consolidation?

Is it, or is it not "due process of law" to give to two municipalities the right to determine the annexation of the smaller to the larger by the majority vote, when the voters in the larger municipality out-number the voters in the smaller municipality two to one?

Is that the customary way of submitting questions to the people to vote upon?

Is that the ordinary, usual and customary election? Is it not a farce?

The law might as well have provided that the votes of those only who voted in favor of annexation should be counted.

By referring to the brief submitted by the defendants in error in support of their motion to dismiss or affirm, on page 6, it will be seen that the City of Pittsburgh polled 31,117 votes in favor of annexation, and 5,223 votes against it, a total vote of 36,340. On page 8 of said brief, we find that the city of Allegheny polled 6,747 votes in favor of consolidation, and 12,307 votes against it, making a total vote in the City of Allegheny of 19,054, which is a little more than one-half of the total vote of Pittsburgh. While the vote in Allegheny against consolidation was nearly two to one of the vote in favor of it, the vote in Pittsburgh in favor of consolidation was nearly six times the vote in Pittsburg against it. If every vote in Allegheny had been against consolidation there would have been 19,054 votes against it, and adding to that the 5,323 votes against consolidation in Pittsburgh, would make a total of 24,277, still leaving a majority of 6,840 in favor of consolidation.

This result was known in advance by the framers of the Act. The sentiment in opposition in Allegheny was known to them. The sentiment in Pittsburgh in favor of consolidation was known to them. They sought to draw a law that, under the pretense of a popular vote, would absolutely annul the vote of Allegheny. They succeeded.

Can this Court sustain such a law, authorizing such a vote? Elections are farcial unless fair and equal. Of what use was it to submit the matter to a vote in Allegheny?

Curiously enough, our learned opponents say that because the Legislature could have consolidated the two cities without a vote, therefore, the vote was immaterial. But the Legislature did not consolidate them without a vote. They gave to the people of the two cities a vote upon the question of consolidation, and this Court has to sustain or condemn that vote and the law which authorized it.

We make no objection to the rule relied upon by our learned opponents, i. e., that it is for the State to determine its political sub-divisions, the number and size of its municipal corporations and its territorial extent. It may be for the Supreme Court of the State to determine whether the method, or process of classifying the municipal corporations and their territorial extent, is in conflict with the Constitution of the State or not; but it is for this Court to determine whether the method pursued by the State, under the Act of Assembly is "due process of law."

We say nothing about the rights or wrongs of the municipalities. We have nothing to say of the enormity of a proposition to merge a city of one hundred and fifty thousand inhabitants into another city, against the protests of two to one of the voters of the smaller city. We are discussing the question of whether the method followed is "due process of law," and whether this Court can say it is, in the light of its former decisions and in the light of the Constitution of the United States.

Local courts, as is apparent in the Sample and in this case, are much impressed with the sentiments of localities. It is very hard to see why the law in controversy is constitutional, if that in the Sample case was unconstitutional.

But this Court, as it often has done, must determine the questions raised, upon the justice and merits of the controversy.

In *Newport Light Company vs. Newport*, 151 United States Reports, 527, this Court said:—

> "The United States Court must determine, when its jurisdiction is invoked to review a decision of the highest court of a state, for itself, whether the suit involves such a federal question as can be reviewed under Revised Statutes Section 709."

Article VI, Section 2, of the Constitution of the United States provides:—

> "This Constitution and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made under authority of the United States, shall be the supreme law of the land and the judges in every State be bound thereby, anything in the Constitution or laws of any State to the contrary nothwithstanding."

It is not only the right but the duty of this Court, regardless of the judicial interpretation of local courts, to determine for itself whether the law before it alleged to be constitutional, is or is not in violation of the Constitution of the United States; to determine whether it is "due process of law."

II.

The Act in question is not "due process of law," and therefore is in conflict with the Fourteenth Amendment of the Constitution of the United tSates, because it limits the power and jurisdiction of the courts simply to to an inquiry whether the petition and the proceedings filed are regular and in conformity therewith.

After providing (Section 2) that on filing the petition the Court shall fix a time for a hearing thereof, not more than

twenty days thereafter and shall direct that notice be given to the mayor and chief executive officers of each of the said cities and to the clerk of councils of each of said cities, and by publication in one or more newspapers published in each of said cities, and that such other notice shall be given as the Court may deem proper, it provides in Section 4, that any person in interest may file exceptions to said petition prior to the time fixed for hearing, and that at such hearing any person in interest shall be heard. It then adds,

> "But if the Court shall find that the petition and proceedings are regular and in conformity with this Act, it shall order an election to be held in the said cities, to vote for or against the proposed consolidation."

In other words, it directs that the Court, if it finds the petition and proceedings to be in conformity with the Act, shall order an election. It takes away from the Court the right to determine whether or not the rights of the exceptants are taken away. It restricts and deprives the Court of any right to inquire except as to whether the petition and proceedings are in conformity with the Act.

In this case, the appellants filed exceptions, alleging that their taxes would be increased; that their rights would be jeopardized, and that their property would be taken away from them without due process of law. And yet the Court could not inquire as to these matters, but only as to whether the petition and proceedings were in conformity with the Act.

Of course we could raise the question of the constitutionality of the law, because that is one of the foundations of the proceedings, but we had no right to traverse any of the questions as to the merit in the consolidation.

We set up in our exceptions that the City of Allegheny owned its electric light plant, and its water plant; that the

City of Pittsburgh did not own its electrict light plant, and did not own a portion of its water plant; that these plants which the City of Pittsburgh did not own would have to be be purchased; and that other costly improvements were contemplated which would subject the taxpayers of Allegheny to this additional burden without any corresponding benefits. While these allegations were in substance, denied by the petitioners, the Court could not find judicially whether they were true or false.

We therefore say that such a method is not "due process of law;" that it hampered, restricted and limited the Court as it did the voters in Allegheny.

The Act was skillfully drawn by the same ingenious hand that now undertakes to support it, and was drawn for the purpose of eliminating all judicial inquiry, and all opposition in Allegheny to consolidation.

The method therein prescribed is not the usual method of determining questions of such great import. It is not customary, just, or fair.

The Act sought to put in the people of Pittsburgh alone, the sole and exclusive right of annexing the City of Allegheny, regardless of the judgments of the Courts and the protests of the people of Allegheny.

III.

The law in controversy is in conflict with the Fourteenth Amendment of the Constitution of the United States because it denies to Allegheny and its citizens the equal protection of the laws.

The cities of Pittsburgh and Allegheny are the only two cities in the State of Pennsylvania to which the law in controversy applies.

The courts of the State have taken judicial cognizance of the municipal divisions of the State in this case, and admit this to be a fact. In *Sample vs. Pittsburgh*, 212 Pa St., 533, the Supreme Court of Pennsylvania said:—

> "As we take judicial cognizance of the municipal divisions of the state as well as of their location, we know as averred in the bill and not denied in the answer, that the cities of Allegheny and Pittsburgh, in Allegheny County, are the only two contiguous cities in the State, and that there are no two contiguous cities in any other county in the state. The Act, therefore, is limited in its operation to these two cities, and the effect or result of the legislation is the same, and the Act as clearly special, as if the names of the two cities had been written in the statute instead of the paraphrase used in the description of the cities subject to its operation."

The Court further said:—

> "There is no merit in the contention that at some time in the future there may be two other cities which may become contiguous and in that event can be consolidated under the provisions of the act. With a knowledge of the facts, known to the legislature as well as to the court, this is not within the range of probability, but a possibility so remote that it must be excluded from consideration in determining the constitutionality of the statute. It could only occur if a community adjacent to any of the cities of the state should become suffeiently populous to enable it to become a city and should take the necessary legal steps to make itself a city and subject to the operation of the act, or if the boroughs lying between and connecting certain cities of the state should,

by the requisite legal proceedings, be annexed to those cities or form themselves into a city and thereby connect two existing cities so as to make the act operative. These are simply contingencies within the realm of speculation and entirely too remote to support legislation otherwise repugnant to the constitutional mandate."

The Supreme Court of Pennsylvania, through Justice Brown delivering the opinion of the Court in this case said:—

"That it (the act in controversy) applies now, and for the present can apply only to the cities of Pittsburgh and Allegheny, and that it was passed for them, can make no difference if the legislation is general in form and substance, and is not within the prohibition of the Constitution."

These admissions clearly establish the fact that Pittsburgh and Allegheny are the only two cities to which the act in controversy can apply. But this Court will itself take judicial cognizance of the municipal divisions of the State as well as of their location.

We may safely say then, that this law applies only to the cities of Allegheny and Pittsburgh. Does it deny to Allegheny and to her citizens the equal protection of the laws?

We have seen, *supra*, that neither a borough nor a township can be annexed to a city in Pennsylvania without a majority vote of its electors. Under this law the City of Allegheny is the only municipality in Pennsylvania that can be annexed to another city without a majority vote of its electors.

As to all other municipalities in the State, the laws of the State protect them against annexation to other municipali-

ties without their consent. But this law denies to and takes away from the City of Allegheny, and from its electors, the right to refuse annexation to another municipality. Does it not then deny to Allegheny and its citizens the equal protection of the laws? Allegheny has a natural right to enjoy the same protection against annexation to other municipalities, which is given the other municipalities in the State. The Fourteenth Amendment guarantees and protects them in such right. It says no state "shall deny to any person within its jurisdiction the equal protection of the laws." The equal protection of the laws must mean that the laws shall protect all equally. The appellants, the City of Allegheny and the other exceptants are persons within the meaning of the Fourteenth Amendment.

This case is ruled in *Cottings vs. Kansas City Stock Yards Co.*, 183 U. S. Reports, 79, in which this Court decided that the statute of Kansas of March 3rd, 1897, entitled "An act defining what shall constitute public stock yards; defining the duties of the person or persons operating the same and regulating all charges thereof and removing restrictions in the trade of dead animals and providing penalties for violation of this act," was in violation of the Fourteenth Amendment of the Constitution of the United States in that it applied only to the Kansas City Stock Yards Company, and not to other companies or corporations engaged in like business in Kansas, and thereby denied to that company the equal protection of the laws.

In that Kansas case, Mr. Justice Brown, delivering the opinion of the Court, cites numerous authorities, which clearly established the rule followed in that decision.

IV.

The City of Allegheny, being a free city in respect to its proprietary rights and interests, is entitled to constitutional protection of such rights and interests.

It was incorporated by an amended Act, approved the twenty-first day of March, 1870 (P. L. 717), by which it was constituted "a corporation and a body politic under the name and style of the City of Allegheny," with power "to have, purchase, receive, possess and enjoy lands, tenements and hereditaments, liberties, franchises and judicatories, goods, chattels and effects, to them and their successors forever, or for any other or less estate, and the same lands, tenements, hereditaments, goods, chattels and effects by such name to grant, bargain, sell, alien, convey, mortgage, pledge, encumber or dispose of at their pleasure."

By said Act it was, *inter alia*, provided:—

> "All property, real, personal or mixed of any nature whatsoever now belonging to the City of Allegheny is hereby vested in the corporation created by this Act, and their successors, to and for the use and benefit of its citizens forever."

By the Act of Assembly, we challenge, it was provided: —concerning two cities situated toward each other as are the cities of Pittsburgh and Allegheny, that the Councils or either of said cities might by ordinance direct that a petition should be filed in the Court of Quarter Sessions of the County in which such cities were situated," praying that the two cities and any intervening land other than boroughs, shall be united and become one city."

It was further provided that upon the filing of such petition, the Court should fix a time for the hearing thereof,

and should direct that notice should be given to the Mayor or chief executive officers of each of the said cities; that any person interested might file exceptions to said petition prior to the date fixed for hearing; that at such hearing any person in interest should be heard; but that if the Court should find that the petition and proceedings were regular and in conformity with the Act, it should order an election to be held in the said cities to vote for or against the proposed consolidation, at which all the legal voters of said cities, and of intervening land, if any, should be qualified to vote.

It was further provided that an election should thereafter be held; and that if it should appear that a majority of all the lawful voters of the cities and of the intervening land, voting upon the said question, voted in favor of the annexation, the Court of Quarter Sessions should enter a decree annexing and consolidating the lesser city and any intervening land, other than boroughs, with the greater city so they shall form but one city and in the name of the greater city.

By said Act, it was, *inter alia,* provided:—

"Section 8. Each of the constitutent cities and the intervening land, if any, so consolidated, shall pay its own floating and bonded indebtedness and liabilities of every kind, and the interest thereon, as the same existed at the time of annexation; and the councils of the consolidated cities shall levy, respectively, on the properties in each of the said cities and intervening land so consolidated, and as they existed at the time of annexation, a tax sufficient to provide funds for each to pay its own floating and bonded indebtedness and liabilities and interest as the same may accrue. The Court of Quarter Sessions is given jurisdiction to ascertain what the bonded and floating indebtedness and liabilities, prop-

erties and assets of each of the said cities and said intervening land may be, due notice being given and an opportunity to be heard being allowed to all parties in interest."

It was further provided:—

"Except as herein otherwise provided all the property, real, personal and mixed, and rights and privileges of every kind, vested in or belonging to either of said cities or to the intervening land prior to and at the time of annexation, shall be vested in and owned by the consolidated or united city."

The City of Pittsburgh containing a much larger population than the City of Allegheny, under the provisions of this Act presented its petition for consolidation. Exceptions were filed to said petition. One of said exceptions was in these words:

"6th. The City of Allegheny has improved its streets, established its own system of electric lighting, and has established a satisfactory water supply. The City of Pittsburgh is largely in debt; has established large and extensive parks in the eastern part of the city; built extensive and costly boulevards; extensive and costly reservoirs for the supply of water, and is contemplating still greater expenditures of money in the cutting down and grading of the elevation of Fifth avenue, known as the hump; and the construction of an extensive filtration plant; and a large expenditure of money in the purchase of the Monongahela Water Company's plant, a plant owned by a private corporation; and further expensive construction of an electric light plant to be owned by the City of Pittsburgh, the said city owning at the present time no lighting plant, it being supplied with light from a private corporation; and the further expenditures of various sums of money for the

acquirement of advantages and property which the citizens of Allegheny now practically own and enjoy, but which the citizens of Pittsburgh do not, and to acquire which would largely increase the indebtedness of the City of Pittsburgh, and if the City of Allegheny should be annexed to the City of Pittsburgh the tax payers of Allegheny including your respondents, will, in addition to the payments of the taxes necessary to pay and liquidate their own indebtedness, have to bear and pay their proportion of the new indebtedness, that must necessarily be created to acquire the facilities, properties and improvements herein stated, in Pittsburgh; all of which would be of no benefit to the citizens and tax payers of Allegheny, including your respondents, who now own and possess these advantages and privileges, and which will largely and unnecessarily increase the taxes of your respondents, as well as the taxes of the other citizens of Allegheny, without any material benefit to them whatever."

It is true as is so frequently asserted in the brief filed in support of the motion to dismiss, that averments in denial of the statement last recited were made on behalf of the City of Pittsburgh, but in view of the fact that under the Act of Assembly which provided for the consolidation the Court was limited to finding that the "petition and proceedings were regular and in conformity with the Act," the issue of fact thus raised could not be, and was not, determined.

The fact of such non-determination, however, hardly justifies the very frequent citations by the defendant in error from its answer, as though what it said, did, in any way, settle the dispute.

We submit that we are entitled to have the present appeal considered upon the assumption that an indebtedness

which had been contracted by the City of Allegheny for a system of water supply and electric lighting has been saddled upon the properties in its boundaries, while the City of Pittsburgh, which had established no such system, will be supplied therewith hereafter by contracting a debt which will be imposed upon the properties in the City of Allegheny, as well as upon those in the City of Pittsburgh.

The record also presents a case in which the City of Allegheny, being possessed of valuable property, which by its charter was vested in it for the use and benefit of its citizens forever, has been stripped of its property for the benefit of the City of Pittsburgh.

The fact that the City of Pittsburgh presented the petition for consolidation, and that such petition was opposed by the City of Allegheny from the outset, is inconsistent with the idea, appearing so often in the brief of defendant in error, to the effect that the latter city is the one benefited by the consolidation.

The plaintiffs in error do not deny that it is within the province of a Legislature to alter, amend, and revise the laws governing those governmental sub-divisions known as municipalities; not that it is within the power of a Legislature, so long as it preserves the rights of property of the respective corporations involved, to merge municipal governments.

Their contention is, that the Legislature did not merge the two cities; but that it delegated its power to others who were permitted to exercise it in a way violative of the Constitution of the United States.

It is contended that a municipal corporation may have rights of property vested in it for the benefit of its citizens

of which it cannot be deprived without due process of law, without violating the federal protection accorded to contracts.

The water and electric plants as well as other property which belongs to the City of Allegheny were held by it under the protection of the Federal Constitution.

It was no part of the governmental duty of the City of Allegheny to transact the business of supplying water or electric lighting. It had a constitutional right to demand that it should not be deprived of these properties; that if any merger or consolidation were enacted it was necessary, for the validity of such enactment, that provision should be made for compensation; and that it was most inequitable to appropriate these plants for the benefit of the consolidated city, whilst the former owner was subjected to the duty of helping to pay for the supply to the larger of the two cities consolidated, of such water and electric light systems.

The plaintiffs in error appeal to the principle which was settled by this Court in *New Orleans vs. New Orleans Water Works Company*, 142 U. S. Reports, 91, where this Court speaking through Mr. Justice Brown said:

> "A municipal corporation, being a mere agent of the State, stands in this governmental or public character in any contract relations with its sovereign, at whose pleasure its charter may be amended, changed or revoked without the impairment of any constitutional obligation, *while with respect to its private or proprietary rights and interests, it may be entitled to the constitutional protection.*"

The contention of the plaintiffs in error is, *inter alia*, (1) that property rights secured to the citizens of Allegheny by a charter which was a contract with the State of Pennsyl-

vania, were taken away without compensation; and (2) that this was done, and the merger or consolidation was accomplished, illegally, without due process of law, in conflict with the Fourteenth Amendment of the Constitution of the United States.

We submit that the questions thus raised have not been heretofore settled by this Court; and that the establishment of the principle that a Legislature may revise, amend or destroy the governmental powers of municipalities, does not determine the question presented. Whether we are right or wrong in the point we submit, we respectfully urge that it is one which raises a federal question and that the question thus raised is not frivolous and has not been heretofore determined.

Whatever the Legislature of Pennsylvania might do, apart from dealing with property rights, in the way of directing consolidations or mergers of municipalities, it was necessary for it to deal with such property rights in accordance with the ordinary process of law.

The Legislature was unwilling to determine that there should or should not be a consolidation. It was beyond its constitutional power to provide specially for the merger of the Cities of Allegheny and Pittsburgh. It was necessary that it should enact a general law in order that the provisions of the Constitution of Pennsylvania in that respect should be complied with. By that general law it delegated to others its legislative duty. In making such delegation, its delegates were obliged to proceed by due process of law.

It is within the province of the Legislature to impose taxes; but if these taxes are assessed upon the basis of valuation, proceedings to value, if not in accordance with the Fourteenth Amendment, are violative thereof and invalid.

The question of whether there should be a merger of the two cities was one which could only be determined by a vote. Two parties were concerned in the question, and any proceedings which brought about a merger without the consent of one of the parties, was not in accordance with law.

After this preliminary statement, we beg leave to submit the following considerations:

By the decision of the Supreme Court of Pennsylvania, reported in 137 Pa. St., 508, in the opinion of Chief Justice Paxson, it is held that the transition to a city of the second class, under the classification Act of Pennsylvania, approved May 23, 1874, P. L. 230, worked no change in the government of Allegheny.

> "The transition from one class to another works no change in its government, except such as the law makes necessary to adjust it to the class in which it goes; it repeals no ordinances; it vacates no offices except those which it abolishes, and make no vacancies to be filled except by creation of new offices.'

The Court, therefore, finds, as a fact that the City of Allegheny is governed by its charter of March 31, 1870, and has never accepted the provisions of the classification Act of May 23, 1874.

The first question then to consider is, what rights do the City of Allegheny and the plaintiffs in error have under the charter granted to the City of Allegheny under the Act of March 31, 1870?

The charter of 1870, to the City of Allegheny, granted by the State, constitutes and creates a contract between the State and the City of Allegheny for the benefit of the City and

its citizens, the City paying its taxes to the State and performing the obligations placed upon it by the Act itself. Under this charter, Allegheny became and is, an independent person or thing, having certain rights and certain privileges, and certain properties, and so long as it is in subjection to the State, obeying the police laws of the State and contributing and paying revenue to the State for the State's support, it has a right to enjoy the franchises and privileges granted to by the charter, and the charter is a contract between the City of Allegheny and the State of Pennsylvania.

Let us then look now at the Act in controversy, and determine whether that Act does impair this contract between the City and the State. The ninth section of the Act provides as follows:

> "Except as herein otherwise provided, all the property, real, personal and mixed, and the rights and privileges of every kind vested in or belonging to either of the said cities or to the intervening land, prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city." See Record page 11.

Bear in mind that this Act of Assembly does not create a new city out of two cities, but annexes the lesser, to the larger, which city is to retain its name, privileges, franchises and powers. We find in the Act itself, this provision:

> "That all property, real, personal and mixed, and the rights and privileges of every kind vested in or belonging to either of the said cities (which of course includes the lesser city), or to the intevrening land, prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city."
>
> **See Record page 11.**

Or in other words, that on consolidation, all the property, real, personal and mixed of Allegheny, is vested in and owned by the City of Pittsburgh.

Is it not true then that the Act in controversy vests, or grants, or declares, that the property of Allegheny shall become the property of Pittsburgh, and that the property of Allegheny shall be vested in and owned by the City of Pittsburgh?

Can it then be doubted that the Act of Assembly in controversy impairs a contract existing between the State and the City of Allegheny and the citizens of Allegheny?

It seeks to transfer the title of Allegheny to its property to the City of Pittsburgh.

The Act does not provide that the properties of the several cities consolidated under said Act, shall remain for the separate use and benefit of each of the consolidated cities, but vests the property of the lesser, in the greater city, contrary to the rights of the citizens of each city as they may exist at the time of the consolidation.

Has the Legislature any right to pass a law transferring the property of Allegheny to the City of Pittsburgh, under the cloak of consolidation, where the City of Allegheny by a vote of two to one, enters its solemn protest against such consolidation and transfer?

It is for this Court to say whether a contract does exist and whether that contract is impaired by this Act of Assembly.

In *Keis vs. Lowry,* 199 U. S. Reports, 233, in a writ of error to the Supreme Court of Michigan, this Court said:—

> "It is the power and duty of this Court to determine for itself the existence or non-existence of a contract, the obligation whereof is claimed to have been impaired, and a federal question may be involved although the State Court may have rested its decision on the construction of the Constitution and laws of the State."

Is there an impairment? That question this Court will determine. In *Powers, Auditor General of Michigan vs. Detroit, Grand Haven & Milwaukee Railroad,* reported in 201 U. S. Reports, 543, this Court said:—

> "A state may, through its legislature, make a valid contract as to taxation with a corporation, which the latter can enforce; and this Court is not under the rule generally applicable as to the binding effect of decisions of the Supreme Court of the State, construing its statutes, concluded by the decision of that court as to whether such a contract exists, the extent of its terms, and whether any subsequent law has impaired its obligations."

In *Graham vs. Folsom,* 200 U. S. Reports, 248, Mr. Justice McKenna says:—

> "The power of the state to alter or destroy its corporations, is not greater than the power of the state to repeal its legislation. Exercise of the latter power has been repeatedly held to be ineffectual to impair the obligation of a contract. The repeal of a law may be more readily undertaken than the abolition of townships, or the change of their boundaries, or boundaries of counties. The latter may put on the form of a different purpose than the violation of a contract. But the courts cannot permit themselves to be deceived. They will not

inquire too closely into the motives of the state, but they will not ignore the effect of its action." * * * *Mt. Pleasant vs. Beckwith,* 100 U. S. Reports, 514, and *Mobile vs. Watson,* 116 U. S. Reports 289, are cases in which municipal corporation had incurred indebtedness and afterward their municipal organization was destroyed and their territory added to other municipalities. It was argued in these cases, as it is argued in this, that such alteration or destruction of the subordinate governmental divisions was a proper exercise of legislative power to which creditors had to submit. The argument did not prevail. It was answered, as we now answer it, that such power extensive though it is, is met and overcome by the provisions of the Constitution of the United States, which forbids a state from passing any law impairing the obligation of contracts."

See also *Shapleigh vs. San Angelo,* 167 U. S. Rep. 646.

The Supreme Court of Pennsylvania has decided, we admit, that the Act of Assembly in controversy, does not impair any contract between the state and the City of Allegheny, and the citizens of Allegheny. But the question whether it does or not is a question for this Court to determine, because such determination determines whether the Act of Assembly is in conflict with the Constitution of the United States. This Court cannot admit that any state court can finally determine such a question namely: whether the Constitution of the United States is violated by the Act of Assembly of the States. It is not a question of whether the Constitution of Pennsylvania is violated by the Act of Assembly, but whether that of the United States is thus violated.

The various cases decided in the Supreme Court of Pennsylvania, cited by the defendants in error, relate to the power

of the legislature of the state to alter, change or amend the laws pertaining to cities. That is not the question here under discussion. The simple question is, the state having given to Allegheny the charter of 1870, can it by another Act, direct and compel that city to turn its property over to the City of Pittsburgh against its will and against its protest? Can the legislature, under the cloak of consolidation, direct and compel one city to give its property up to another city against its protest?

We admit that the legislature retains the power to pass legislation for the police of the state; that it may alter, amend or regulate the laws governing cities, but we deny that under the charter of the City of Allegheny which vests its property in the City, the legislature has the power to legislate the title of the property belonging to the City of Allegheny over and into the City of Pittsburgh.

In *New Orleans vs. New Orleans Water Works Company*, 142 U. S. Reports, 79, this Court held:

> "The municipal government was a mere agent of the state in its governmental character, and was in no contract relations with its sovereign at whose pleasure its charter may be amended, changed or revoked, without the impairment of any constitutional obligation."

In the present case, the charter is not amended, nor changed, nor revoked, but, one city, without its consent, with all of its property, is legislated into the greater city. While the legislature might amend, and perhaps revoke the charter of Allegheny, it could not pass the property of Allegheny over to Pittsburgh by law, as was attempted.

In *New Orleans vs. New Orleans Water Works Co. supra,* this Court also held:—

> "That such a corporation in respect to its private or proprietary rights and interests, might be entitled to constitutional protection."

The Massachusetts courts take the same view of such a corporation. See *Broome vs. Furner,* 176 Mass. 9.

In *New Orleans vs. New Orleans Water Works Co. supra,* the Court further said:—

> "Enough cases have been cited to show the nature of a municipal corporation as stated by this Court. In general it may be conceded that it can own private property, not of a public or governmental nature, and that such property may be entitled, as is said, to constitutional protection. Property which is held by these corporations upon conditions or terms contained in a grant and for special use, may not be diverted by the legislature. This is asserted in *Commissioners, etc., vs. Lucas, Treasurer,* 93 U. S. Reports, 108-115; and in *Mount Hope Cemetery vs. Boston,* 158 Mass., 509, the Supreme Court of Massachusetts held that cities might have a private ownership of property which could not be wholly controlled by the state government."

An Act of Assembly may not be in conflict with the Constitution of the State, and yet may be in conflict with the Constitution of the United States. In holding that such an Act is in conflict with the Constitution of the United States, his Court does not hold necessarily, nor pass upon the question of whether it is in conflict with the Constitiution of the State, or not. It is immaterial to this Court, whether it is, or is not. While this Court may not see fit to traverse the judgmen of the Supreme Court of the State in respect to the

conflict of an Act of Assembly with the Constitution of the State, yet its jurisdiction and power to determine whether such Act of Assembly is in conflict with the Constitution of the United States, cannot be questioned. Its duty is to enforce the Constitution of the United States. The enforcement of that Constitution requires this Court to prohibit the enforcement of any Act of Legislature of a State in conflict with the Constitution of the United States. This Court cannot delegate that power, nor substitute any State court, or any other court, to exercise it.

See *Powers, Auditor General of Michigan vs. Detroit, Grand Haven & Milwaukee Railroad,* 201 U. S. Reports, 543.

V.

The argument of the defendant in error, that the Supreme Court of the United States will give due weight and consideration to the decisions of the highest courts of a state in construing the Constitution of that state, has no relevancy to the present question. We are not asking this Court to construe the Constitution of the State of Pennsylvania, but the Constitution of the United States. The fact that the Quarter Sessions Court of Allegheny County, the Superior Court of Pennsylvania, and the Supreme Court of Pennsylvania, have construed the Act in question, and have decided that it is not in conflict with the Constitution of Pennsylvania, and that it is not in conflict with the Constitution of the United States, still leaves for this Court alone to determine whether it is in conflict with the Constitution of the United States.

We cannot refrain from calling the attention of this Court to the inconsistency which the Supreme Court of Pennsylvania has manifested in its construction of the Act of Assembly in question, and in its construction of the Act pro-

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viding for the annexation of a smaller city to a larger one, approved April 20, 1895. (P. L. 1905, page 221) See Appendix No. 2 in our brief in reply to the motion to dismiss or affirm.

The Supreme Court of Pennsylvania in construing the Act of 1905, in the case of *Sample vs. City of Pittsburgh,* 212 Pa. St., 533, decided that Act to be unconstitutional, and held, in the opinion delivered by Justice Mestrezat, that a statute providing for the annexation of one city to another was a law regulating the affairs of cities, within the meaning of Article III, Section 7, Sub-division 2, of the Constitution of Pennsylvania, while the same court in the opinion delivered by Justice Brown in the case at bar, held that "in legislation providing for the annexation of any two cities of the Commonwealth, there is no regulation of the affairs of any two particular cities."

The decision of the Supreme Court of Pennsylvania, in *Sample vs. City of Pittsburgh,* is entirely consistent with all the previous decisions of that Court construing special legislation as prohibited by Article III, Section 7, Sub-division 2, of the Constitution of Pennsylvania, whilst the decision of that court in the present case is in conflict with all decisions heretofore rendered on the subject of special or local legislation prohibited by the Constitution of Pennsylvania.

Comparison of the two Acts of Assembly, that is, the Act of April 20th, 1905, and that of February 7, 1906, now in controversy, leaves it impossible to see why, if one is unconstitutional, the other is not unconstitutional. If *Sample vs. City of Pittsburgh* is decided rightly, then the decision rendered in this case is wrong. It is impossible to reconcile the two decisions.

VI.

The appellants have a right to file and maintain their exceptions, and test the constitutionality and validity of the law in controversy, and the law in controversy does regulate the affairs of cities.

In support of this contention we submit the case of *Sample vs. City of Pittsburgh,* 212 Pa. St. 541, and the cases cited in the opinion of the Supreme Court of Pennsylvania in that case:—

> "The answer of the defendants raise the question of the right of the plaintiffs, citizens and taxpayers of Allegheny City, to maintain this bill and test the constitutionality of the act of 1905. We think this question too well settled to require extended discussion: *Wells vs. Bain,* 75 Pa., 39; *Wheeler vs. Philadelphia,* 77 Pa., 338; *Pittsburgh's Appeal,* 79 Pa., 317. This last case was a bill to restrain the city of Pittsburgh and its officers from exercising authority over an adjacent municipality admitted to the city by an ordinance passed in pursuance of an act of assembly, the provisions of which the plaintiffs, citizens and taxpayers of the municipality, claimed had not been complied with by councils in admitting the municipality as a part of the city. The defendants denied the right of the plaintiffs to maintain the bill. In sustaining the bill, Mr. Justice Gordon, speaking for the court said (p. 324): 'The right of a private citizens to maintain a bill such as that upon which this case is founded is hardly open for argument. So many are the cases in which such bills have been sustained that one might suppose this matter to be no longer open for debate.' It was also said in the opinion that 'the plaintiff, who is threatened by most burdensome impositions, should have the power to in-

quire the right by which the councils of Pittsburg proposed to act in subjecting his person and property to their jurisdiction for the purposes of municipal government and taxation."

There can be no doubt that the act of 1905 regulates the 'affairs of cities' in contemplation of the constitution. In *Morrison vs. Bachert,* 112 Pa. 322, the trial court defined 'affairs of counties' to be such 'as concern counties in their governmental and corporate capacity.' This court, however, thought the definition too narrow a construction of these words and held that 'when it (the constitution) speaks of the affairs of a county, it means such affairs as affect the people of that county.' In that case it was held that an act to ascertain and appoint fees to be received by certain county officers was an act regulating the affairs of counties. This construction of the clause in question was followed and approved in *Frost vs. Cherry,* 122 Pa. 417, where it was held that this clause of the constitution avoided an act of assembly repealing a section of the fence law of 1700. And in *Commonwealth vs. Patton,* 88 Pa., 258, and in *Scowden's Appeal,* 96 Pa., 422, this court held that an act of assembly authorizing the holding of special sessions of the courts of certain counties away from the county seat was a law regulating the affairs of counties and was special legislation and void. In *Perkins vs. Philadelphia,* 156 P., 554, it was held that an act of assembly 'regulates the affairs of the city' which abolished the commissioners of public buildings and placed all public buildings theretofore under their control in the control of one of the departments of the city government. The act under consideration here not only affects the people of the two cities but concerns the two cities in their governmental and corporate capacities. It enlarges the territory and population of

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one, and deprives the others of its charter and government as a city. It is apparent, we think, that the act is a 'law regulating the affairs of' the cities within its operation."

Respectfully submitted,

JOHN G. JOHNSON,
WILLIAM A. STONE,
Attorneys for Appellants.

Office Supreme Court, U. S.
FILED.
OCT 19 1907
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

No. 264 OCTOBER TERM, 1907.

D. HUNTER, Jr., ROBERT K. COCHRANE, JOHN A. SAUER and HERMAN W. HECKLEMAN, and THE CITY OF ALLEGHENY, Plaintiffs in Error.

vs.

CITY OF PITTSBURGH, Defendant in Error.

In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Pennsylvania.

BRIEF OF DEFENDANT IN ERROR.

W. B. RODGERS,
J. RODGERS McCREERY,
JOHN M. FREEMAN,
D. T. WATSON,
Attorneys for Defendant in Error.

Smith Bros. Co. Inc., Franklin Print. 413 Grant Street, Pittsburgh.

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In the Matter of the Petition of the City of Pittsburgh for Uniting, Annexing and Consolidating the City of Allegheny to and with the City of Pittsburgh.

History of the Case.

By an Act approved February 7th, 1906, and recited at length in the record, pp. 8 to 15 inclusive, the State of Pennsylvania enacted as follows:

The title of the Act was

> "An Act to enable cities that are now or may hereafter be contiguous or in close proximity to be *united with any intervening land other than boroughs in one municipality.* * *

Section 1st provided:

> "That wherever in this commonwealth now or hereafter two cities shall be contiguous or in close proximity to

each other, the two, with any intervening land, other than boroughs, *may be united and become one by annexing and consolidating the lesser city* and the intervening land other than boroughs, if any, *with the greater city,* and *thus making one consolidated city,* if at an election to be held as hereinafter provided, there shall be a majority of all the votes cast in favor of such union."

The method of deciding the question of consolidation was this: The councils of either city might file a petition in the Court of Quarter Sessions of the county in which the cities are situated, or two per cent. of the registered voters of either of said cities might present said petition

"praying that the two cities and any intervening land other than boroughs *shall be united and become one city.*"

The Act directed the Court to give notice of the petition to the mayor or chief executive officer of each of the cities and the clerk of councils in each of the cities, and that notice should also be published in one or more newspapers of the time for hearing of the petition. Section 4 provides that:

"Any person interested may file exceptions to said petition prior to the day fixed for hearing. At such hearing any person in interest shall be heard."

And if, after hearing, the court should decide that the proceedings were regular, and in conformity with the Act, the Act provides:

"It shall order an election to be held in the said cities to vote for or against the *proposed consolidation* at which all the legal voters of either of said cities and of the said intervening land, if any, shall be qualified to vote."

Notice of such election shall be prescribed by the court, ballots shall be prepared and the election held at the regular

polling places by the regular election officers under the general election laws of the state,

> "and all lawful voters of either city and also of the said intervening land, if any, may vote."

Returns shall be made to the prothonotary's office for computation and the result certified by the proper officers to the Court of Quarter Sessions. The Act provided that if a majority of all the lawful voters of both cities and the intervening land voting upon such question have voted in favor of consolidation,

> "the said Court of Quarter Sessions shall enter a decree *annexing and consolidating* the *lesser city* and any intervening land, other than boroughs, with the *greater city, so that they form but one city* and in the name of the greater or larger city."

Section 9 provided that

> "*All the citizens of each of the united cities* and of the intervening land *shall be entitled to and enjoy and exercise full rights of citizenship in the said enlarged and consolidated city.* All the rights of creditors and all liens and all the rights of the constituent cities and the government of the intervening land to enforce the payment of moneys due either, or of contract liabilities or of other claims or *rights of property* existing in either city or in the government of the intervening land at the time of the annexation shall be preserved unimpaired to each; and each of the said cities and the government of the intervening land, for the purpose of enforcing its rights and claims in the premises, and also of having prior rights and claims enforced against it, shall be deemed in law to continue in existence. Except as herein otherwise provided all the property, real, personal and mixed, and rights and privileges of

every kind, vested in or belonging to either of said cities, or to the intervening land, prior to and at the time of the annexation, *shall be vested in and owned by the consolidated or united city.*"

"In case of annexation the Court may appoint commissioners to ascertain the floating and bonded indebtedness of * * * and also an account of all property of every kind owned or claimed by the cities."

Provision is also made for the government of the city by departments of public safety, public works, collector of delinquent taxes, assessors, city treasurer, city comptroller, law, charities and corrections, and sinking fund commissions.

The purpose of the Act was to unite two cities in one *municipality.*

The title of the Act was

"to enable cities * * * to be united * * * in one municipality."

Section 1:

"If two cities shall be contiguous * * * the two may be united and become one by annexing and consolidating the lesser city * * * with the greater city and thus making one consolidated city."

Again Section 2 provides that a petition may be filed

"praying that the two cities shall be united and become one city."

Section 3 provides that

"the petition for annexation shall describe the boundaries of the proposed consolidated city."

Section 4 provides that at the election the people shall

"vote for or against the proposed consolidation."

Section 7 provides for ascertaining whether the people

"have voted in favor of the annexation or consolidation."

If they have the court shall enter a decree

"annexing and consolidating the lesser city with the greater city * * * so that they form but one city and in the name of the greater or larger city."

Section 9:

"All the citizens *of each of the united cities* * * * shall be entitled to and shall enjoy and exercise full rights of citizenship in the said enlarged and consolidated city."

Subject to certain exceptions the property of each of the old cities

"shall be vested in and owned by the consolidated or united city."

After the Act was passed, and on February 17th, 1906, the City of Pittsburgh presented a petition alleging that (page 16)

"the cities of Pittsburgh and Allegheny are contiguous to each other and both situated in the County of Allegheny, and it is desired that the City of Allegheny, which is the lesser city, shall be annexed to and consolidated with the City of Pittsburgh, which is the greater city, *and thus making one consolidated city.*"

The petition gave the boundaries of the proposed consolidated city, as required by the Act, and thereupon the court made an order fixing March 8th, 1906, as the time for the

hearing and directed notice to be given to the City of Allegheny, its mayor, &c.

On March 7th, 1906, Christ S. Knauer, D. Hunter, Jr., Robert K. Cochrane, John A. Sauer and Herman W. Heckelman, (but not the City of Allegheny), filed certain exceptions and answer to the petition, and among other things alleged that (page 22)

> "The said Act was unconstitutional, because it was contrary to Article 3, section 7, sub-division 2, of the Constitution of the State of Pennsylvania."

Also, because the act was passed at a special session of the legislature and that the proclamation of the governor convening the special session did not permit the enactment of such legislation, and therefore the act was unconstitutional.

The 12th allegation of the Answer or exception was:

> "The Act of Assembly under which this petition is filed for the annexation of the City of Allegheny to the City of Pittsburgh is in conflict with Article 1, Section 9, paragraph 10 of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of additional or enlarged city government by legislation is in violation of said Article 1, section 9, paragraph 10 of the Constitution of the United States and therefore is unconstitutional."

The thirteenth paragraph or exception alleged that:

> "The Act of the General Assembly under which this petition is filed is in conflict with Article V of the Amendments to the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the value of the property of your respondents, and they, therefore, will be deprived of their property, in violation of Article V of the Amendments to the Constitution of the United States."

The 14th paragraph, or exception alleged that:

> "The Act of Assembly under which this petition is filed is in conflict with Article 14 of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place, will cause a large depreciation in the value of the property of your respondents."

The 15th, 16th, 17th, 18th, 19th, 20 and 21st exceptions all alleged that the Act was unconstitutional, because in violation of the Constitution of the State of Pennsylvania, and the only alleged violations of the Federal Constitution have been given *supra.*

Exception 22nd of the answer, however, was in these words (p. 27):

> "The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower and out-number those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

No other federal question was raised.

Neither the petition nor the answer sets out what municipal property was owned by either Pittsburgh or Allegheny, except that paragraph 6th of the Exceptions did allege as follows: (Record, p. 24)

> "The City of Allegheny has improved its streets, established its own system of electric lighting, and has established a satisfactory water supply."

On March 10th, 1906, the city of Pittsburgh filed a reply to the Answer in which, among other things, it denied the averments in the said sixth paragraph of the exceptions as follows:

> "And the averments in the sixth exception are denied as therein stated; but it is true that the City of Allegheny has to some extent improved its streets and has established a system of electric lighting. It is denied that it has established a satisfactory water supply, and on the contrary, the one now existing is very unsatisfactory."

The Reply of the City of Pittsburgh also avers as follows: (p. 30)

> "It is denied, as averred in the twelfth Exception, that any contract exists between the City of Allegheny and the exceptants by which the exceptants are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny."

And further—

> "It is denied that the annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of the exceptants and create additional burdens on the property of the exceptants, without compensation, or that it will depreciate the value of the property of the exceptants. On the contrary, the annexation of the City of Allegheny to the City of Pittsburgh will largely increase the value of the property of the exceptants, and the contemplation even of such annexation has already enhanced the value of the same."

This answer denied that the consolidation would increase the taxes or lessen the value of the property of the exceptants located in the City of Allegheny, but on the contrary averred that the taxes would be decreased and the value of the property increased; alleged that real estate in Allegheny had fallen at least one-half in value in the last ten years, and that the consolidation of Pittsburgh and Allegheny, instead of being a detriment, would be a very decided benefit to the city of Allegheny and all its inhabitants, and that by the annexation the City of Allegheny would procure what it has not now, a supply of pure, wholesome water; it alleged that a large majority of the property owners of Allegheny City are decidedly in favor of annexation, and that the opposition to the annexation was mainly political.

The case went to hearing on the petition as filed—the Exceptions and the reply to the Exceptions. No testimony was taken.

The Exceptants did not offer or ask to be allowed to introduce testimony in support of the allegations of their Answer.

A hearing was duly had and the Court of Quarter Sessions of Allegheny County, McClung, J., on April 25th, 1906, filed an opinion in which he said as follows: (p. 35)

"The only exceptions argued before us are those raising the constitutionality of the Act of February 7, 1906, upon the grounds:

1st. That the legislation is not within the proclamation of the Governor convening the assembly in extraordinary session.

2nd. That said Act is local or special legislation in conflict with Article III, Section 7, Subdivision II, of the Constitution of the State."

The Judge overruled the exceptions, sustained the petition and made an order for an election.

The present appellants filed exceptions to the action of the court which are given at length on pages 31 and 32 of the record in this case, and subsequently to the decree of the court dated June 16th, 1906, which is given at length on pages 32 and 33 of the record the exceptants filed other exceptions which are found on pp. 33 and 34 of the record; none of these exceptions raised any other federal question than those above stated.

An election was held as ordered by the Court of Quarter Sessions of Allegheny County, and the returns of such elec-

tion, held June 12th, 1906, showed the total number of votes cast at said election to be as follows:

In Pittsburgh,	31,117 in favtr,	5,223 against
In Allegheny,	6,747 in favor,	12,307 against
Total in both cities in favor of,	37,864	
Total in both cities against,		17,530
Majority in favor of:	20,151	

On June 16th, 1906, after the result of the election was announced showing that a large majority of the people within the territorial limits had voted in favor of consolidation, the Court of Quarter Sessions of Allegheny County made the following order: (pp. 32-33)

"And now, this 16th day of June, 1906, it appearing that, pursuant to the order of this court made on April 30th, 1906, an election was held in the cities of Pittsburgh and Allegheny on the 12th day of June, 1906, and that the result thereof has been certified by the proper officers of the Courts of Common pleas of the County of Allegheny to this Court by which it appears that a majority of all the lawful voters of the said two cities, voting upon such question, have voted in favor of the annexation or consolidation of the City of Allegheny to and with the City of Pittsburgh, it is now ordered, adjudged and decreed that the City of Allegheny, the lesser city, be annexed and consolidated with the City of Pittsburgh, the greater or larger city, so that they form but one city and in the name of the City of Pittsburgh, under the provisions of an Act of Assembly, entitled 'An Act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the

consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each,' approved the 7th day of February, 1906."

"By the Court."

From the action of the Court of Quarter Sessions the exceptants appealed to the Superior Court of the State of Pennsylvania, and on pages 40-42 inclusive, will be found the Specifications of Error made in that court.

No one of these Specifications raises any Federal question except the 4th, 5th, 6th and 7th, which are as follows:

"Fourth. The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

"Fifth. The Act of Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pittsburgh is in conflict with Article I, Sections 9, Paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said City of Allegheny and the attempt to subject them to the increased taxes and burdens of an

additional or enlarged city government, by legislation, is in violation of Article 1, Section 9, Paragraph 10 of the Constitution of the United States, and therefore is unconstitutional."

"SIXTH. The Act of the General Assembly under which this petition is filed is in conflict with Article V of the Amendments to the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the value of the property, in violation of said Article V, of the Amendments to the Constitution of the United States, and they therefore will be deprived of their property."

"SEVENTH. The Act of Assembly under which this petition is filed is in conflict with Article XIV of the Amendments to the Constitution of the United States, because the said annexation of the City of Allegheny, to the City of Pittsburgh deprives *your respondents* of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of your respondents."

The Superior Court affirmed the judgment and decree of the court below by an opinion filed November 19th, 1906, (p. 43): thereupon (p. 53) the petitioners appealed to the Supreme Court of the State and in that court they filed Assignments of Error which are given at length on pp. 56, 58 of the record in this case. All the errors assigned were to the

action of the Superior Court and no one of the Assignments of Error raised *any Federal question except* the 4th, 5th, 6th and 7th, (p. 57), which assigned for error the action of the Superior Court in overruling the 4th, 5th, 6th and 7th assignments of error just given, which the same appellants had made in the Superior Court, and which we print at length on the preceding pages, and which, to save space, we do not repeat here.

The Supreme Court of the State, on March 11th, 1907 (p. 59) affirmed the judgment of the Superior Court in an opinion printed on page 59 of the Record.

The appellants on March 18th, 1907, petitioned the Supreme Court of Pennsylvania for a re-hearing or re-argument which the Supreme Court refused on the same day. (p. 70) Thereupon the petitioners petitioned the Supreme Court (p. 71) for an *allocatur* for a writ of error from the Supreme Court of the United States, and this application, the Chief Justice of the Supreme Court of Pennsylvania refused, saying (p. 72):

> "March 18, 1907, there being no Federal question involved the application for writ of error is refused."

Afterwards, and on March 20th, 1907, application was made to Mr. Justice Moody of the Supreme Court of the United States for an *allocatur* for a writ of error, and the petition and the reasons for the writ are given on pages 73 to 79. These Assignments of Error are found on pages 80 and 81.

No Federal question was raised by those Assignments of Error except the identical four Federal questions raised by Assignments of Error in the Superior Court and the Supreme Court of the State, as hereinbefore stated, except that the petitioners did add the two following Assignments of Error (See pp. 81-82):

"Fifth. The Supreme Court of the State of Pennsylvania erred in not holding that the Act of General Assembly of Pennsylvania, approved February 7th, A. D. 1906, entitled 'An Act to enable cities that are now, or may hereafter be, contiguous, or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each,' was special or local legislation and in conflict with Article 3, Section 7, Sub-division 2 of the Constitution of the State of Pennsylvania, which constitutional provision provides that 'The General Assembly shall not pass any local or special law, regulating the affairs of counties, cities, townships, wards, boroughs or school districts; and the said Act of Assembly, being in conflict with said provision of the Constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the 14th Amedment to the Constitution of the United States."

"Sixth. The Supreme Court of the State of Pennsylvania erred in not holding that the said Act of Assembly, entitled as aforesaid, was passed at an extraordinary or special session of the Legislature, convened by the Governor of Pennsylvania under Article 4, Section 12, of the Constitution of Pennsylvania, which provides that the Governor may, on extraordinary occasions, convene the General Assembly; and that the subject of the said legislation or Act of Assembly, aforesaid, was not designated in the proclamation of the Governor, calling such session, or in the paper or proclamation issued by him dated January 9th, 1906, and is therefore in conflict with Article 3, Section 25 of

the Constitution of Pennsylvania, which provides that 'When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session,' and that the said Act of Assembly is, by reason thereof, not due process of law, and is in conflict with the 14th Amendment of the Constitution of the United States."

April 15th, 1907, the City of Pittsburgh moved the court to dismiss the writ of error in this case, because,

"(1) There is no Federal question in the case and therefore this court has no jurisdiction, and said City of Pittsburgh, even if this court has jurisdiction of the case, moves to affirm said decree, because,

(a) It is manifest that the Writ of Error was taken for the purpose of delay only:

(b) The questions upon which the jurisdiction depend are so frivolous as not to need further argument:

(c) The Federal questions attempted to be raised in this proceeding by the plaintiffs in error have been time and again decided by this court adversely to the present contention of the plaintiffs in error:

(d) The proceeding under the Act of the State of Pennsylvania approved February 17th, 1906, now attacked for the annexation of Allegheny City to Pittsburgh is a statutory and not a common law proceeding and a writ will not lay to the affirmation of the Supreme Court of the state of the order or decree of the court below."

Briefs were filed in support of, and in opposition to, this motion, and this court, on April 22, 1907, made the following order:

"IT IS ORDERED by the Court that the further consideration of the motions to dismiss or affirm in this cause be, and the same is hereby postponed until the hearing of the cause on the merits.

It is further ordered that this cause be, and the same is hereby, advanced and assigned for argument on Monday, October 21st next, after the cases heretofore assigned for that day.

April 22, 1907."

In the brief of the plaintiffs in error they printed in the appendix a copy of the Act of 1870 which is one of several acts in reference to the municipal corporation of the City of Allegheny.

If the court takes judicial notice of these acts (we print all of them relating to the City of Allegheny in our Appendix), they show that the city of Allegheny as a municipal corporation of the State of Pennsylvania has been legislated for and about since the year 1783, and the following is a brief history of these acts:

The legislative history of Allegheny City in Pennsylvania is as follows:

By an Act approved March 12th, 1783, (P. L. 62) for the purpose of redeeming and paying certificates of depreciation issued to Pennsylvania soldiers in the Revolutionary War, a tract of land containing three thousand acres in an oblong, extending up and down the Ohio and Allegheny Rivers, was reserved for the use of the state. In 1787 its sale was deemed advisable, and the state passed an Act approved September 11th, 1787 (Smith's Laws, 414) (see Appendix), directing the president and councils of the state

to cause to be laid out and surveyed a town in lots with outlots, reserving for the use of the state so much land as they deemed necessary for a court house, jail, market house, etc., and one hundred acres for a common pasture. This is the origin of the City of Allegheny, and the place itself was called Allegheny. It will thus be seen that the state donated the land for a court house, jail, the market house, for places of public worship and for burying the dead, and also for a commons.

By an Act of April 14th, 1828 (P. L. 368), the state provided that

> "Allegheny Town in the County of Allegheny shall be and the same is hereby erected into a borough."

By another Act, approved April 13th, 1840, (P. L. 303) the state provided that

> "The inhabitants of the Borough of Allegheny in the County of Allegheny, as the same extends and is now incorporated, are hereby constituted a corporation and body politic, by the name and style of the mayor, aldermen and citizens of the City of Allegheny."

By an Act, approved March 31st, 1870, (P. L. 717), the charter of the City of Allegheny and the several acts amendatory thereof, were revised and put into one act.

By an *Act approved March 18th, 1868, P. L. 352,* the state annexed a portion of Duquesne Borough to Allegheny City and *provided for the division of the property of said borough, part to go to Allegheny City and part to be retained by the other portion of the borough.*

By an *Act approved March 28th, 1870, P. L., 562,* certain other portions of McClure Township were annexed to

and made part of Allegheny City, and provision was made with reference to the *division of the property* of the Township.

By an *Act approved April 4th, 1872, P. L. 926,* a part of Reserve Township was annexed to Allegheny City and a provision *made for the division of the property* of Reserve Township between the City of Allegheny and the other portions of the Township.

By an *Act approved April 15th, 1873, P. L., 787,* all the balance of McClure Township was annexed to the City of Allegheny.

In no one of these Acts of annexation was there any vote of the people, or any assent either from the part annexed or from the City of Allegheny to the Act of the State Legislature.

PITTSBURGH LEGISLATIVE HISTORY.

The Borough of Pittsburgh was incorporated by Act of Assembly, entitled "An Act to erect the town of Pittsburgh in the County of Allegheny, into a borough," passed April 22, 1794 (3 St. Laws, 588.)

Its corporate powers were extended by an Act of Assembly, entitled "An Act to alter an Act, entitled 'An Act to erect the town of Pittsburgh, in the County of Allegheny, into a borough,' and for other purposes." Approved March 5, 1804 (P. L. 199).

The charter of the City of Pittsburgh was conferred by Act of Assembly, entitled "An Act to incorporate the City of Pittsburgh," approved March 18th, 1816 (P. L. 160).

The first extension of its boundaries was by Act of Assembly, entitled "An Act supplementary to an act entitled 'An Act to incorporate the City of Pittsburgh,' approved March 1st, 1837, wherein the borough of Northern Liberties was added to and incorporated into the City of Pittsburgh without a vote of the people.

The second extension of boundary was by Act of Assembly, entitled "A further supplement to the Acts incorporating the City of Pittsburgh, extending its boundaries, enlarging its corporate powers and perfecting its municipal organization and submitting the proposed consolidation to a vote of the people." Approved April 6th, 1867 (P. L. 846)

Under this Act three districts were designated, each of which should have a separate vote on the question of consolidation. The first, or "central district" consisting of the City of Pittsburgh, the borough of Lawrenceville and the townships of Pitt, Oakland, Collins, Liberty and Peebles voted in favor of consolidation. The other two districts consisting *first* of the City of Allegheny, include Manchester, the boroughs of Duquesne and Sharpsburg; the townships of McClure and Reserve and portions of the townships of Indiana, Shaler and Ross, and *second*, the boroughs of Birmingham, East Birmingham, South Pittsburg, Monongahela, West Pittsburg, Temperanceville and Mt. Washington and portions of the townships of Lower St. Clair and Union, voted against consolidation.

The Act provides (Section 3): "In case a majority of the qualified electors of either of the districts * * * decide in favor of consolidation" it shall become a part of the enlarged city. Thus by a joint vote of all the municipal corporations mentioned in the "central district," one city, one borough and five townships, became incorporated in one city. This is *pari passu* to the present case.

By Act of Assembly, entitled, "A supplement to the several acts incorporating the city of Pittsburgh, enlarging its boundaries, etc," approved April 3, 1872 (P. L. 743) the boroughs of Temperanceville, Union, Allentown, Mt. Washington, Birmingham, East Birmingham, Monongahela, Ormsby, South Pittsburgh, St. Clair and West Pittsburgs were annexed to the City of Pittsburgh without a vote of the people.

Since the passage of the last recited act several small districts have been annexed to the City of Pittsburgh by separate vote under the provisions of general acts relating to boroughs and townships.

CITY OF PHILADELPHIA.

By an Act approved February 2, 1854, P. L. 21, the limits of the old city of Philadelphia were extended to and made co-terminous with the limits of the County of Philadelphia, and this embraced all the boroughs and towns within the county, and also all the townships such as Delaware, Moreland, Byberry, Oxford and Dublin, the Boroughs of Franklin, Whitehall and Manayunk.

The 37th Section of the Act provided that:

"All the right, title and interest of the several townships, districts, and other municipal corporations mentioned in this act, of, in and to all the lands, tenements, hereditaments, bridges, ferries, railroads, wharves, markets, stalls, landings, landing places, water works, gas works, buildings, easements and franchises of, in, and to all goods, chattels, moneys, effects, debts, dues, demands, amercements, fees, perquisites, rights, incomes, bonds, obligations, judgments, liens, actions, and rights of action, books, accounts and vouchers and

of, in, and to all other property and estate whatsoever, and wheresoever belonging to any or either of them, be and they are hereby vested in the city of Philadelphia, to take effect on the first organization of the city councils; Provided, That all the estates and incomes now held in trust by the county, present city, and each of the townships, districts, and other municipal corporations united by this act, shall be held by the city of Philadelphia upon, and for the same uses, trusts, limitations, charities and conditions, as the same are now held by the said corporations respectively."

Argument.

The assignments of error in this court are all to the ruling of the Supreme Court of Pennsylvania. They were and are the original exceptions which were filed in the Quarter Sessions and renewed in the Superior and Supreme Court. No new assignment of error was filed in the Supreme Court of Pennsylvania. They all allege that the Supreme Court of Pennsylvania erred, because that Court overruled certain exceptions filed in it by the plaintiffs in error, which set up that the State Act in question violated the Federal constitution, because:

(1) "It impairs the obligation of the contract existing between the City of Allegheny and your respondent by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of additional or enlarged city government by legislation is in violation of said Article 1, Section 9, Paragraph 10 of the constitution of the United States, and, therefore, is unconstitutional."

(2) That the act
"Is in conflict with Article 5 of the amendments to the constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburg will add additional taxes to the

property of your respondents and create additional burdens without compensation, and will depreciate the value of the property of your respondents and they, therefore, will be deprived of their property in violation of Article 5 of the amendments to the constitution of the United States."

(3) That the Act
"Is in conflict with Article 14 of the amendments to the constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburg deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of your respondents.

(4) Another exception was that the Act
"Is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower and outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city.

(5) In *this Court,* Supreme Court of United States, were filed for the first time two additional exceptions to the action of the Supreme Court of Pennsylvania, which were not filed in that Court. Those exceptions are as follows:

"Fifth: The Supreme Court of the State of Pennsylvania erred in not holding that the Act

of General Assembly of Pennsylvania, approved February 7th, A. D. 1906, entitled 'An Act to enable cities that are now, or may hereafter be, contiguous, or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each,' was special or local legislation and in conflict with Article 3, Section 7, Subdivison 2 of the Constitution of the State of Pennsylvania, which constitutional provision provides that 'The General Assembly shall not pass any local or special law, regulating the affairs of counties, cities, townships, wards, boroughs or school districts; and the said Act of Assembly, being in conflict with said provision of the Constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the 14th Amendment to the Constitution of the United States.'

(6) "Sixth: The Supreme Court of the State of Pennsylvania erred in not holding that the said Act of Assembly, entitled as aforesaid, was passed at an extraordinary of special session of the Legislature, convened by the Governor of Pennsylvania under Article 4, Section 12, of the Constitution of Pennsylvania, which provides that the Governor may, on extraordinary occasions, convene the General Assembly, and that the subject of the said legislation or Act of Assembly aforesaid, was not designated in the proclamation of the Governor, calling such session, or in the paper or proclamation issued by him dated

January 9th, 1906, and is therefore in conflict with Article 3, Section 25 of the Constitution of Pennsylvania, which provides that 'When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, and that the said Act of Assembly is, by reason thereof, not due process of law, and is in conflict with the 14th Amendment of the Constitution of the United States.'"

Analyzed all these exceptions reduce themselves to this:

(I). That the State law violated the obligation of a contract which the exceptant alleged the State had made with them

"by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny."

(II). Because the consolidation of Pittsburgh and Allegheny will deprive

"your respondents of their property without due process of law and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburg will add additional taxes to the property of your respondents and create additional burdens without compensation, and will depreciate the value of the property of your respondents, and they therefore will be deprived of their property, in violation of Article V of the Amendment to the Constitution of the United States.'

(III). Because the consolidation

"deprives your respondents of their property without due process of law. The additional taxes and

burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of your respondents.'

(IV.) Because the Act is

"in violation of the law of the land, it being unfair, unjust and unequal,"

because it allows the qualified voters of the larger City to overpower those of the lesser City without the consent of a majority of the qualified electors of the lesser city.

(V.) In this Court they also alleged

the act is unconstitutional because it violates the State Constitution in two respects, i. e., that the legislation is local and special and the act is not within the Governor's proclamation—and therefore it is not due process of law.

But the 5th Amendment to the Constitution operates only on the federal governments and does not restrict the States.

In *Jack vs. Kansas,* 199 U. S. 372, 379 Mr. Justice Peckham said: (pp. 379-380)

"It has been so frequently held, as not to warrant the citation of many authorities, that the first ten amendments to the Federal Constitution operate on the National Government only, and were not intended to, and did not, limit the powers of the States in respect to their own people. *Spies vs. Illinois,* 123 U. S. 131; *Brown vs. New Jersey,* 175 U. S. 172, 174. That portion of the Fifth Amendment, therefore, already cited, has no

application in a proceeding like this, in a state court, under a state statute."

And again in *Brown vs. New Jersey,* 175 U. S. 172, 174, Mr. Justice Brewer said: (p. 174)

"The first ten amendments to the Federal Constitution contain no restrictions on the powers of the State, but were intended to operate solely on Federal Government. *Barron vs. Baltimore,* 7 Pet. 243; *Fox vs. Ohio,* 5 How. 410; *Twitchell vs. Commonwealth,* 7 Wall. 321; *United States vs. Cruikshank,* 92 U. S. 542, 552; *Spies vs. Illinois,* 123 U. S. 131; In *re Sawyer,* 124 U. S. 200, 219; *Eilenbecker vs. District Court of Plymouth County,* 134 U. S. 31; *Davis vs. Texas,* 139 U. S. 651; *McElvaine vs. Brush,* 142 U. S. 155; *Thorington vs. Montgomery,* 147 U. S. 490; *Miller vs. Texas,* 153 U. S. 535."

In addition however there are other decided answers.

Taking up these exceptions in their order we find:

(I) Exceptants allege a contract by the City of Allegheny with them that they shall not be taxed except for the government of the City of Allegheny.

We deny any such contract—

See our denial in the history of the case and in the record (p. 30).

The denial is:

"It is denied, as averred in the twelfth exception that any contract exists between the City of Alle-

gheny and the exceptants by which the exceptants are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny.'

The exceptants have not offered any evidence of any kind to sustain their averment of the existence of such contract.

No such contract ever was made.

The allegations then on which this exception was based are wholly unfounded and the exception falls.

(II). Will the consolidation deprive the plaintiffs in error of their property? The plaintiffs in error say it will, because it will add additional taxes and create additional burdens, and will depreciate the value of the property of the plaintiffs, and the exception concludes:

"and they therefore will be deprived of their property."

We deny that this legislation or consolidation will deprive the respondents of their property. On the contrary, we assert that it will enhance the value of their property. In answer to their exceptions in the State court we said that: (p. 30.)

"It is denied that the annexation of the City of Allegheny to the City of Pittsburg will add additional taxes to the property of exceptants and create additional burdens on the property of the exceptants without compensation, or that it will depreciate the value of the property of the exceptants. On the contrary, the annexation of the City of Allegheny to the City of Pittsburg will largely increase the value of the property of

the exceptants, and the contemplation even of such annexation has already increased the value of the same. * * * * Said annexation would largely increase the value of said property."

The exceptants offer no evidence whatever in support of their allegations. They did not prove that they owned any property in the City of Allegheny, or that in any shape or form, if they did so own, that they would be deprived of that property, or that it would be lowered in value, or additional burdens put upon it. We asserted that the annexation would increase the value and would not add to the taxes or impose additional burdens.

As the exceptants offered no testimony whatever in support of their averments, and did not offer to do so, this exception also falls.

(III). Here again the very foundation of this exception is that the respondents will be deprived of their property without due process of law, *because* the property will have to bear additional taxes and burdens, which would cause a large depreciation in the value of the same.

As we have just seen as to the preceding exception, these averments are denied by us and were denied in the State Court. The exceptants offered no evidence whatever in support of them. They are wholy unsupported in this case as the record shows. The averment was contradicted in the State Court and here again this exception, like the two preceding, falls because that the facts alleged in it are utterly unsupported.

DUE PROCESS OF LAW.

Assuming this exception does raise a federal question (which we do not admit) let us examine it.

(IV). This exception is that, because the question of whether there should be consolidation was left to be decided by the majority of voters within the entire territory to be covered by the united city that the act was unconstitutional: exceptants allege that the question of the uniting two cities should have been left to be decided by the majority of the voters inside the City of Allegheny, and if the majority of those voters decided against annexation, the exceptants say that this would be conclusive, and they allege that because that right was not given to the majority of the voters of the City of Allegheny that, therefore, the Act is unconsitutional.

The actual vote cast on the question of annexation was as follows: 55,577. Of these 37,864 voted in favor of annexation, and 17,713 voted against. The majority in favor of consolidation was 20,154.

In Allegheny City there were cast 19,054 votes, and of these votes 12,307 were against annexation.

Just about three times as many voted in favor of consolidation, i. e., 37,864, as voted against consolidation in Allegheny City, 12,307. As the total vote in Allegheny City was 19,054, and the claim of the exceptants is that a majority of the voters in Allegheny City should be allowed to defeat the scheme of annexation, it would follow from their positon that if 9,528 people of Allegheny City voted against annexation, this would overrule and control the 37,864 people, all of whom, together with the 9,000 lived within the territorial limits of the proposed new city and would allow this one-fourth of the total to prevent consolidation.

Certainly there is nothing fair or just or equal in that, and aside from what might be termed the legal aspect of the question, it does seem monstrous to claim that where the state is considering whether two municipal subdivisions within certain borders should be united and form one large city and thereby lessen the burdens and expenses of municipal government, that one-fourth of the people within that territory should be allowed to defeat that plan.

Viewed in its legal aspect, it is not believed that a single case or text book can be cited in support of the proposition. A city is nothing but a municipal corporation of the state, made by the state for the purpose of administering and governing a certain locality. There is no contract relation between the city and the State; as the State made, she can destroy or take away, and the law of Pennsylvania, and indeed the decisions of this Court show, that the State may add to a city, may take away from a city, may merge a city or a borough or two cities, or two townships, or two boroughs, and this without any intervention of the voters and even *against the wishes of the majority of the voters* within the territorial limits. As the State has the absolute power to do this, to merge or take away a charter, or to add additional territory, or take it away, it may select, at its own option, the plan under which it will be carried out, and the voters of the district have no voice whatever in the determination of that question, unless the State sees fit to delegate the same to them.

If the State has the absolute power to annex one city to another without consulting the people of either city, how is it possible to say that it cannot do so when a majority of all the people in the proposed greater city are in favor of it, simply because a majority of such people in either city oppose it? That majority could not prevent the State from acting.

It is the State in the end that acts, that consolidates, that annexes. The method adopted here of ascertaining the wishes of the people and annexing, if a majority were in favor, does not make it less the act of the State. To assert that a mere majority in the lesser city can control a majority of all the people in the proposed enlarged city implies that the majority of the lesser city had some vested right to the continuance of Allegheny City as a municipal corporation. Yet nothing is better settled than that no one of the voters of Allegheny City had any vested right in the continuance of that government. The cases in this court and cited *infra* are uniform to that effect. The idea that somehow the question of merger between two cities shall be left to be determined by a majority of the voters of the lesser city is certainly something new in municipal law, and is wholly unsupported by any decided case that we have any knowledge of.

The claim that in some way under the State or the Federal Constitution the individual living within a municipal subdivision has a right to vote upon the question of whether that municipal subdivision should be changed, and if a majority of the voters are against it, that the change could not take place, is certainly unsupported by authority, and yet this is the very basis of the present claim of the exceptants.

The logical basis on which such a position could be sustained is that each individual citizen had a vested right that no change could take place without his consent. The majority as a majority have no right separate and apart from the united individual rights of all the individuals who compose the majority. But the individual has no such right.

How can it possibly be said that this legislation in Pennsylvania as to consolidation of two cities, is not due process of law?

In both the 5th and 14th Amendments to the Federal Constitution, the requirement of due process of law is always in connection with

"life, liberty or property."

Thus, Article V says:

"No person shall be * * * deprived of life, liberty or property without due process of law."

And the XIV Amendment provides:

"Nor shall any state deprive any person of life, liberty or property, without due process of law."

To raise the question then, of whether a given Act is due process of law, it must in some way attack life, liberty or property.

That the state has the power to deprive a municipal corporation of its charter or merge a municipal corporation with another corporation, or add to or restrict its boundaries, is shown by the cases, *infra*, and when it does this all these cases hold that it does not *deprive* any one of life, liberty or property. The question of how, and under what circumstances a merger of two or more municipalities shall take place is for the state and the state alone to determine, and the question is purely legislative and not judicial, and before any claim can be made that the legislation is not due process of law, the facts must be shown to demonstrate that it deprives someone of life, liberty or property. As we have seen in the statement of facts in this case, this legislation can, by no possibility, deprive any of the exceptants of life, liberty or property, and therefore there can be no question of due process of law.

No one of the Exceptants, under the facts as the record shows them, is deprived or will be deprived of his property or his liberty or life by this legislation or the consolidation to take place thereunder.

The following decisions of this Court fully sustain the foregoing propositions:

DECISIONS OF SUPREME COURT OF OHIO.

~~*Jack vs. Kansas, 199 U. S., 372, 379.*~~

A case specially in point is the recent case of the *State of Ohio ex. rel. Attorney General vs. the City of Cincinnati,* 52 Ohio State, 419, (27 L. R. A., 737). There by an act of the legislature of Ohio the question of the annexation to the city of Cincinnati of the villages of Riverside, Westwood, Clifton, Avondale and Linwood was left to a majority vote of all five of the villages or towns, the result being that one of the towns voted against the consolidation, but a majority of the people of all the towns voted in favor of consolidation.

The court held that the act was constitutional, and the annexation was consummated.

The court said:

> "That the enlargement of the territorial boundaries of municipal corporations by annexation, and the consequent extension of their corporate jurisdiction, including that of levying taxes, are legitimate subjects of legislation, must be admitted; and hence, the extent to which such legislation shall be enacted, both with respect to the conditions and circumstances under which the annexation may be had, and the manner in which it may be made, rests wholly in the discretion of the general assembly, except in so far as limitations upon

its power are contained in the constitution. Accordingly, legislation has been sustained, which authorized the annexation of territory, without the consent of its inhabitants, to a municipal corporation having a large unprovided-for indebtedness, for the payment of which the property included within the territory annexed became subject to taxation. *Powers vs. Wood County Comrs.*, 8 Ohio St., 285; *Blanchard vs. Bissell*, 11 Ohio St., 96. In both of these cases it was held that the annexation might be made without the consent, and even against the remonstrance of a majority of the persons residing on the annexed territory, that the lands thus annexed were liable to local taxation for the payment of the pre-existing indebtedness of the municipality, and that the statute authorizing such annexation was constitutional; the court saying in the first of the cases that there is no constitutional provision on he subject, and that: 'it would require a very arificial and unsound mode of reasoning to hold that territory could not be annexed to a town which owed debts, until the owners of such territory were paid a compensation in money for a proportional part of such debt, on the ground that the property annexed was condemned for public use;' and further, that it is not 'to be presumed that a municipal corporation has contracted a debt without being correspondingly benefited.' And in *Metcalf vs. State*, 49 Ohio St., 586, a statute was held valid which, in turn, detached from a city, without its consent, territory included in its corporate limits, and attached to it another taxing jurisdiction. * * *

It is maintained by very high authority that it is clearly within the legislative discretion to extend or restrict the boundaries of municipal corporations, 'or consolidate two or more into one.' *Cooley on Constitutional*

Limitations, 6th ed., 228; and it is declared by Mr. Justice Clifford, in *Mount Pleasant vs. Beckwith,* 100 U. S., 515-524, 25 L. ed., 699-70, to be the constant practice for legislative bodies to divide or consolidate municipal corporations, and that such action is often necessary for the public interests and convenience. And in *Meriwether vs. Garrett,* 102 U. S., 472-511, 26 L. ed., 197-204, it is said by Mr. Justice Field: 'Municipal corporations are mere instrumentalities of the state for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged or entirely withdrawn at its pleasure. This is common learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers. There is no contract between the state and the public that the charter of a city shall not be at all times subject to legislative control. * * * There is no such thing as a vested right held by any individual in the grant of legislative power to them.' Many other authorities, much to the same effect, are cited in the brief of counsel for the defendant which we deem it unnecessary to notice further. We have been referred to none maintaining the contrary doctrine, and have found none. In the light of these authorities, we would be unwarranted in holding that the legislature transcended its powers in passing the act in question; and, observing in this case the well-established rule that the courts should not declare a statute unconstitutional unless convinced that it is clearly so, we hold the statute in all respects constitutional and valid."

Mount Pleasant vs. Beckwith, 100 U. S., 514, 531:

"Power exists here in the legislature, not only to fix the boundaries of such a municipality when incor-

porated, but to enlarge or diminish the same subsequently, without the consent of the residents, by *annexation* or set-off, unless restrained by the (State) constituion, *even against the remonstrance of every property holder and voter within the limits of the original municipality.*

Property set-off or annexed may be benefited or burdened by the change, and the liability of the residents to taxation may be increased or diminished; but the question, in every case, is entirely within the control of the legislature."

SUPREME COURT OF U. S. DECISIONS.

The creation and consolidation of municipal corporations, the determination of their boundaries and the administration of their internal affairs, are matters peculiarly within the jurisdiction of the state. These are questions upon which the determination of the state authorities will be accepted by the Federal courts as authoritative and controlling.

Forsyth vs. Hammond, 166 U. S. 506, 518:

"The matter in controversy is one peculiarly within the domain of state control. *Kelly vs. Pittsburgh,* 104 U. S., 78. It is for the State to determine its political subdivisions, the number and size of its municipal corporations and their territorial extent. These are matters of a local nature in which the nation, as a whole, is not interested, and in which, by the very nature of things, the determination of the state authorities should be accepted as authoritative and controlling."

Many authorities are cited in the opinion on page 519.

In *Williams vs. Eggleston,* 170 U. S. 304, a statute was held constitutional which organized five towns without their consent into a corporation designated a "bridge district," and

compelling each town to bear its proportionate share of the cost of erecting a bridge.

Mr. Justice Brewer said: (p. 310)

"But this overlooks the fact that the regulation of municipal corporations is a matter peculiarly within the domain of state control; that the State is not compelled by the Federal Constitution to grant to all its municipal corporations the same territorial extent, or the same duties and powers. A municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the State for conducting the affairs of government, and as such it is subject to the control of the legislature. That body may place one part of the state under one municipal organization and another part of the State under another organization of an entirely different character. *These are matters of a purely local nature, in respect to which the Federal Constitution does not limit the power of the State.* 'Whether territory shall be governed for local purposes by a county, a city or a township organization, is one of the most usual and ordinary subjects of state legislation. *Kelly vs. Pittsburgh,* 104 U. S. 78, 81. See also *Forsyth vs. Hammond,* 166 U. S. 506, 518, 519, and cases cited in the opinion, 1 *Dillon on Municipal Corporations,* 4th ed. Vol. 1, p. 52 and following.'

Kelly vs. Pittsburgh, 104 U. S. 78, 81:

Wilson vs. North Carolina, 169 U. S., 586, 593:

Claiborne County vs. Brooks, 111 U. S. 400, 410:

"It is undoubtedly a question of local policy with each State, what shall be the extent and character of the powers which its various political and municipal organizations shall possess; and the settled decisions of

its highest courts on this subject will be regarded as authoriative by the Courts of the United States; for it is a question that relates to the internal constitution of the body politic of the State."

In the *Town of Mt. Pleasant vs. Beckwith,* 100 U. S., 514, which is a case where territory was taken from and added to the City of Racine and the Town of Mt. Pleasant and the Town of Caledonia, this court said: (p. 524)

"Counties, Cities and Towns are municipal corporations created by the authority of the legislature, and derive all their powers from the source of their creation except where the constitution of the state otherwise provides. * * * Corporations of the kind are composed of all the inhabitants of the territory included within the political organization, each individual being entitled to participate in its proceedings; *but the powers of the organization may be modified or taken away at the mere will of the legislature, according to its own views of public convenience, and without any necessity for the consent of those composing the body politic...**..*..* Institutions of the kind, whether called cities, towns or counties, are the auxiliaries of the state in the important business of municipal rule; but they cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between themselves and the legislature of the state, because there is not and cannot be any reciprocity of stipulation between the parties, and for the further reason that their objects and duties are utterly incompatible with everything partaking of the nature of compact.

"Instead of that, the constant practice is to divide large municipalities and to consolidate small ones, or set off portions of territory from one and annex it to another to meet the wishes of the residents or to promote

the public interests, as understood by the legislature, it being everywhere understood that the legislature possesses the power to make such alterations and to apportion the common property and burdens as to them may seem just and equitable.

"Alterations of the kind are often required to promote the public interests or the convenience and necessities of the inhabitants; and public history shows that it has been the constant usage in the state to enlarge or diminish the power of towns, to divide their territory by set off and annexation, and to make new towns whenever the legislature deems it just and proper that such a change should be made. Old towns may be divided and new ones incorporated out of parts of the territory of those previously organized;"

Again on page 529 this court said:

"Municipal corporations, says Mr. Justice Field, so far as they are invested with subordinate legislative powers for local purposes, are mere instrumentalities of the state for the convenient administration of their affairs. * * * Modifications of their boundaries may be made or their names may be changed or one may be merged in another, or it may be divided, and the moities of their territory may be annexed to others."

Again on page 531:

"Corporations of a municipal character, such as towns, are usually organized in this country by special acts or pursuant to some general state law, and it is clear that their powers and duties differ in some important particulars from the towns which existed in the parent country before the Revolution when they were created by special charters from the crown and acquired many of their privileges by prescription, without any aid from Parliament. Corporate franchises of the kind granted during that period partook much more

largely of the nature of private corporations than do the municipalities created in this country and known as towns, cities and counties. *Power exists here in the legislature, not only to fix the boundaries of such municipality when incorporated, but to enlarge or diminish the same subsequently without the consent of the residents, by annexation or set off, unless restrained by the Constitution, even against the remonstrance of every property holder and voter within the limits of the original municipality.*

"Property set off or annexed may be benefitted or burdened by the change and the liability of the residents to taxation may be increased or diminished, but the question in every case is entirely within the control of the legislature, and if no provision is made, every one must submit to the will of the state as expressed through the legislative department. Inconvenience will be suffered by some, while others will be greatly benefitted in that regard by the change. *Nor is it any objection to the exercise of the power that the property annexed or set off will be subjected to increased taxation.* Or that the town from which it is taken or to which it is annexed will be benefitted or prejudiced unless the constitution prohibits the change, since it is a matter, in the absence of constitutional restriction, which belongs wholly to the legislature to determine."

In *Laramie County vs. Albany Co.,* 92 U. S. 307, where the legislature had diminished the area of one county and increased the area of another, it was ruled: (p. 310)

"Corporations of the kind are properly denominated public corporations for the reason that they are but parts of the machinery employed in carrying on the affairs of the state; and it is well settled law that charters under which such corporations are created may be changed,

modified or repealed as the exigencies of the public service or the public welfare may demand. * * * such corporations are composed of all the inhabitants of the territory included in the political organization; and the attribute of individuality is conferred on the entire mass of such residents, *and it may be modified or taken away at the mere will of the legislature, according to its own views of public convenience and without any necessity for the consent of those composing the body politic.*"

In *Covington vs. Kentucky,* 173 U. S. 231, this court said:)p. 241)

"A municipal corporation is a public instrumentality established to aid in the administration of the affairs of the State. *Neither its charter nor any legislative act regulating the use of property held by it for governmental or public purposes, is a contract within the meaning of the Constitution of the United States.* * * *

In *Attorney General of the State of Michigan vs. Lowry,* 199 U. S., 233, which was a question of the division of the property of municipal corporation, this court holding that there was no Federal question, said: (p. 240):

"Institutions of the kind, whether called counties or towns, are the auxiliaries of the State in the important business of municipal rule, and cannot have the lest pretension to sustain their privileges or their existence upon anything like a contract between them and the legislature of the state because there is not and cannot be any reciprocity of stipulation, and their objects and duties are utterly incompatible with everything of the nature of compact. Instead of that, the constant practice is to divide large counties and towns, and to consolidate small ones, to meet the wishes of the residents, or to promote the public interests as understood

by those who control the action of the legislature. Opposition is sometimes manifested *but it is everywhere acknowledged that the legislature possesses the power to divide counties and towns at their pleasure and to apportion the common property and the common burdens in such manner as to them may seem reasonable and equitable.*"

In *Worcester vs. Worcester Street Railway Co.*, 196 U. S. 539, this court said (p. 549):

"A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department. The legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the state. * * *

As is stated in *United States vs. Baltimore & Ohio R. R. Co.*, 17 Wall., 322, 329, a municipal corporation *is not only part of the state, but is a portion of its governmental power. 'It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the state. The state may withdraw these local powers of government at pleasure, and may, through its legislative or other appointed channels, govern the local territory, as it governs the state at large. It may enlarge or contract its powers, or destroy its existence.'* " "* * * that such corporations were composed of all the inhabitants of the territory included in the political organization; and the attribute of individuality is conferred on the entire mass of such residents, and it may be modified or taken away at the mere will of the legislature, according to its own views of public convenience,

and *without any necessity for the consent of those composing the body politic.*

In *Merriwether vs. Garrett,* 102 U. S., 472, an Act was passed by the state of Tennessee for the revocation of the charter of the City of Memphis.

This court, sustaining the power of the state, said: (p. 511)

> "The right of the state to repeal the charter of Memphis cannot be questioned. Municipal corporations are mere instrumentalities of the state for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. This is common learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers. There is no contract between the state and the public that the charter of a city shall not be at all times subject to legislative control. *All persons who deal with such bodies* are conclusively presumed to act upon knowledge of the power of the legislature. *There is no such thing as a vested right held by any individual in the grant of legislative power to them.*"

In *Kelly vs. City of Pittsburg,* 104 U. S., 78, where the State of Pennsylvania passed an Act whereby part of the Township of Collins became part of the City of Pittsburg, and Kelly filed a bill alleging that he owned property in Collins Township which thereby became part of the City of Pittsburg; that taking it into the City increased his taxes and that he thereby was deprived of his property without due process of law. This court, affirming the decision of the Court below (p. 80) said:

> "The distinct ground on which this provision of the Constitution of the United States is invoked is, that as

the land in question is, and always has been, used as farm land, for agricultural use only, subjecting it to taxation for ordinary city purposes, deprives the plaintiff in error of his property wtihout due process of law. It is alleged, and probably with truth, that the estimate of the value of the land for taxation is very greatly in excess of its true value. Whether this be true or not we cannot here inquire. We have so often decided that we cannot review and correct the errors and mistakes of the State tribunals on that subject that it is only necessary to refer to those decisions without a restatement of the argument on which they rest. *State Railroad Tax Cases,* 92 U. S. 575; *Kennard vs. Louisiana, id.* 480; *Davidson vs. New Orleans,* 96 id. 97; *Kirtland vs. Hotchkiss,* 100 id. 491; *Missouri vs. Lewis,* 101 id. 22; *National Bank vs. Kimball,* 103 id. 732.

"But, passing from the question of the administration of the law of Pennsylvania by her authorities, the argument is, that in the matter already mentioned the law itself is in conflict with the Constitution.

"It is not denied that the legislature could rightfully enlarge the boundary of the city of Pittsburg so as to include the land. If this power were denied, we are unable to see how such denial could be sustained. *What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation.*"

Decisions in Pennsylvania.

In no state has the legislative power to revoke a charter of a municipality or to consolidate counties or cities or towns with or without the vote of the people connected therewith and affected thereby or even against their protest, been more

consistently and strongly maintained than in Pennsylvania. In one of our very latest cases the law is thus laid down:

See *Commonwealth vs. Moir,* 199 Pa., 541:

"Municipal corporations are agents of the State, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed and the extent of their powers determined by the legislature, and subject to change, repeal, or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no state has it been more clearly expressed and more uniformly applied than in Pennsylvania."

This fact was recognized by this court in the case of *Laramie County vs. Albany County,* 92 U. S., 112 and also *Kelly vs. Pittsburgh,* 104, U. S. 78.

In the case at bar reported as *Pittsburg's Petition* 217 Pa. St., 227, the Supreme Court of Pennsylvania said:

"The method of consolidation is said to be unconstitutional because it is not by 'due process of law' 'in that it permits electors of the larger city to overpower or outnumber those of the lesser city and to annex the lesser city without the vote or consent of majority of the qualified voters of electors of the lesser city.' This is completely answered in the following extract from the opinion of the learned Judge speaking for the Superior Court: 'In determining whether this act is contrary to that "due process of law" guaranteed by the Federal Constitution in providing that the electors of the consolidated territory shall determine the question of annexation of the lesser city, instead of permitting the majority of the

electors of lesser city to decide it, we have many adjudicated cases which warrant the action taken by the Legislature. The words 'due process of law,' as taken from Magna Charta and incorporated in the Constitution, were intended to secure the individual from the arbitrary exercise of the powers of government unrestrained by the established principle of private rights and distributive justice. In each particular case the words mean: such an exercise of the powers of government as the settled maxims of law permit and sanction and under such safe guards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belong: *Cooley's Constitutional Limitations,* 434. The people of the municipalities do not define for themselves their own rights, privileges and powers, nor is there any common law which draws a definite line of distinction between the powers which may be exercised by the State and those which must be left to the local government: *2 Kent's Commentaries,* 278-279. The general principle is that when the State is acting in its sovereign capacity it acts for the whole Commonwealth and private rights and interests must yield to this paramount object. Private rights may be and very frequently are interfered with by either the legislative, executive or judicial departments of the Government, and the creation of municipal corporations and the conferring upon them of certain powers and subjecting them to corresponding duties does not deprive the Legislature of the State of that general control over their citizens which they before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one and overrule their legislative action whenever it is

deemed unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion and substitute those which are different.—*Cooley's Constitutional Limitations,* 228. 'Restraints on the legislative power of control must be found in the condition of the State or they must rest alone in the legislative discretion. If the legislative action operates injuriously to the municipalities or to individuals, the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to to right through ballot box all these wrongs: —*Ervine's appeal,* 16 Pa., 256; *Cooley's Constitutional Limitations,* 228, 229, 230. 'The act in question has been passed with all the form and ceremonies requisite to make it a valid statute. The Legislature was properly convened and kept well within its powers in regulating the affairs of cities by a general law in accord with the requirements of the Constitution.

'It follows, under the law of the land, that neither the municipality as such nor any of the persons residing therein have any vested rights in the municipal powers as against the State which created the municipality. It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—subject to legislative control "which may destroy its very existence with the mere breath of arbitrary decision:"—*Philadelphia vs. Fox,* 64 Pa., 169.'

Authorities everywhere support the foregoing. In our own cases may be found the following: 'The City of Philadelphia is, beyond all question, a municipal corporation—that is, a public corporation created by the Government for political purposes and having subordinate and local powers of legislation: 2 *Kents Com.* 275; an incorporation of persons, inhabitants, of a particular

place or connected with a particular district, enabling them to conduct its local civil government.—*Glover Mun. Corp.* 1: It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—having no vested right to any of its powers or franchises—the charter or act of erection being in no sense a contract with the State, and therefore fully subject to the control of the Legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangements, or destroy its very existence with the mere breath of arbitrary decision. *Sic volo, sic jubico,* that is all the sovereign authority need say. This much is undeniable and has not been denied. * * * The sovereign may continue its corporate existence and yet assume and resume the appointments of all its officers and agents into its own hands; for the power which can create and destroy can modify and change:' *Sharswood, J., in Philadelphia vs. Fox,* 64 Pa., 169. 'Municipal corporations are agents of the State invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed and the extent of their powers determined by the Legislature and subject to change, repeal or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers or even their corporate existence. This is the universal rule of constitutional law, and in no State has it been more clearly expressed and more uniformly applied than in Pennsylvania. * * * *The fact that the action of the State toward its municipal agents may be unwise, unjust, oppressive or violative of the natural or political rights of their citizens is not one which can be made the basis of action by the judiciary.'—Commonwealth vs. Moir,* 199 Pa., 534."

Text Books.

In *Dillon on Municipal Corporations,* Vol. 1, Section 185, 4th Ed., after an elaborate citation of authorities, the doctrine is stated as follows:

> "Not only may the legislature originally fix the limits of the corporation, but it may, unless especially restrained in the Constitution, subsequently annex or authorize the annexation of continguous or other territory, and this without the consent, and *even against the remonstrance of the majority of persons residing in the corporation or on the annexed territory.* And it is no constitutional objection to the exercise of this power of compulsory annexation that the property thus brought within the corporate limits will be subject to taxation to discharge a pre-existing municipal indebtedness, since this is a matter which in the absence of special constitutional restriction, belongs wholly to the legislature to determine."

In *Cooley's Constitutional Limitations,* 7th Ed. pp. 266, *et seq.,* the rule is laid down as follows:

> "That the legislature * * * has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion, and substitute those which are different. The rights and franchises of such a corporation, being granted for the purposes of government, can never become such vested rights as against the State that they cannot be taken away, nor does the charter constitute a contract in the sense of the constitution provision which prohibits the obligation of contracts being violated. Restraints on the leg-

islative power of control must be found in the Constitution of the State or they must rest alone in the legislative discretion. If the legislative action in these cases operates injuriously to the municipalities or to individuals, the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to to right through the ballot boxes all these wrongs."

See numerous cases cited in the different notes to this section.

In *Sutherland's Notes on the Constitution of the United States*, page 309, the rule as to municipal corporations is stated as follows, and numerous cases from this court are referred to in support of the doctrine.

"Public corporations such as counties, towns and cities are created by the authority of the legislature and invested with subordinate legislative powers to be exercised for local purposes connected with the public good. The charters of such corporations cannot be considered contracts within the protection of the obligation clause, and the legislature has unlimited power to alter, annul or repeal them, unless the state constitution provides otherwise. A municipal corporation is a mere creature of the legislature, established for the purposes of government, and entirely subject to the legislative will; transactions between the legislature and such a corporation are in the nature of legislation rather than of compact, a power to alter and change public corporations and to adapt them to public purposes is implied on a grant of power, and may at any time be resumed by parties under them may be affected. * * * A municipal corporations' power does not rest upon contracts, with the state."

Due process of law in the Fourteenth Amendment means a proceeding in accordance with the law of the state, and if a party is given notice and an opportunity to be heard in a regular judicial proceeding in the courts of the state, he is not denied due process of law.

The record conclusively shows that all the appellants were given a full opportunity to be heard. Three courts in Pennsylvania, the Quarter Sessions, the Superior Court and the Supreme Court allowed them to raise all the objections they saw fit to the consolidation act and the proceedings under it. They were not denied a hearing in any way or at any time. True they saw fit to go to a hearing without offering testimony to prove some of the averments in their exceptions, but as they did not ask to introduce the proof, it surely cannot be said that the Courts denied them the right. With this practical construction of the act of consolidation, with three courts hearing all the objections they raised and passing upon those objections, it certainly seems quite late to urge that the consolidation act is not due process of law because it denied them a full hearing or the right to introduce testimony.

Section 4 of the Consolidation Act, page 9, provided that,

> "Any person interested may file exception to said petition prior to the day fixed for hearing. At such hearing any person in interest shall be heard; but if the Court shall find that the petition and proceedings are regular and in conformity with this act it shall order an election, etc."

The word regular means, see *Matter of McCusker*, 23 N. Y. Misc. Rep., 446, 450, 451, N. Y. Supp., 281:

> "*Regularly*, in common English means: constituted, appointed or conducted in the proper manner; conformable to *law* or custom; duly authorized."

Due process of law is itself defined:

"Law in its *regular* course of administration through courts of justice is due process." Fuller, C. J., in *Leeper vs. Texas,* 139 U. S., 462, 468.

Its practical construction in this case was to give a full hearing on all the constitutional questions the appellants raised.

Sections 8and 9 also provided for,

"An opportunity to be heard being allowed to all parties in interest,"

on the question of what the debts and properties of each city were.

Apart from these provisions of the Act of Consolidation, the Courts in Pennsylvania were always open to the appellants by bill in equity or other appropriate legal proceeding to prevent the consolidation of the two cities if there was any legal objection to the same.

For example, they might have filed a bill in equity and raised all these questions as they did in the case of *Sample vs. The City of Pittsburgh,* 212 Pa., 533, to test the legality of a former act regulating consolidation.

The following extracts plainly declare the law:

In *Williams vs. Eggleston,* 170 U. S. 304, 311:

"In casting this burden upon the towns, the legislature did not act without a hearing from the towns,

for their representatives were in the legislature and took part in the proceedings by which the act was passed, so that they had an opportunity to be heard, if such hearing was necessary prior to the enactment of the law."

Leeper vs. Texas, 139 U. S. 462, 468.

"Law in its regular course of administration through courts of justice is due process, and when secured by the law of the state the constitutional requirement is satisfied."

Hortado vs. California, 110 U. S., 534.

"It is not possible to hold that a party has, without due process of law, been deprived of his property, where as regards the issues effecting it, he has, *by the laws of the state,* a fair trial in a court of justice according to the modes of proceeding applicable to such a case."

Central Land Company vs. Laidley, 159 U. S. 103, 112:

"When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the Constitution of the United States. *Walker vs. Sauvinet,* 92 U. S. 90; *Head vs. Amoskeag Co.,* 113 U. S. 9, 26; *Morley vs. Lake Shore Railroad,* 146 U. S. 162, 171; *Bergman vs. Backer,* 157 U. S. 655."

Morley vs. Lake Shore Railway Co., 146 U. S., 162, 171, 172:

"* * * the adjudication of the plaintiff's claims by the courts of his own State must be admitted to be due process of law. Nor are we authorized by the ju-

diciary act to review this judgment of the state court, because this judgment refuses to give effect to a valid contract or because such judgment in its effect impairs the obligation of a contract. If we did, every case decided in the state courts could be brought here, when the party setting up a contract alleged that the court took a different view of its obligation from that which it held. *Knox vs. Exchange Bank*, 12 Wall. 379, 383."

In re Kemmler, 136 U. S. 436, 448:

"As due process of law in the Fifth Amendment referred to that law of the land which derives its authority from the legislative powers conferred on Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law, so, in the Fourteenth Amendment, the same words refer to that law of the land in each State. * * * "

In *In re Converse*, 137 U. S., 624, 632, Chief Justice Fuller defined the scope of the Fourteenth Amendment thus:

"It was not designed to interfere with the power of the State to protect the lives, liberty and property of citizens; nor with the exercise of that power in the adjudications of the courts of the State *in administering the process provided by the law of the State.*"

Fallbrook Irrigation District vs. Bradley, 164 U. S. 112, 168:

"Due process of law is not violated, and the equal protection of the laws is given, when the ordinary course is pursued in such proceedings for the assessment and collection of taxes that has been customarily *followed in the State*, and where the party who may subsequently be charged in his property has a hearing or

an opportunity for one provided by the statute. *Kelly vs. Pittsburg,* 104 U. S. 78."

(V). The 5th and 6th Assignments of Error are as follows:

The Pennsylvania consolidation Act violates the Constitution of Pennsylvania in two respects:

(a) It is local and special, which the State Constitution forbids;

(b) It was not authorized under the proclamation of the Governor who called a special session:

Therefore, proceedings under it are not "due process of law."

The Supreme Court of Pennsylvania in an opinion printed in the record, decided the act was not local or special legislation and that it was authorized by the Proclamation of the Governor calling the special session.

As this is the judgment of the Court of last resort in Pennsylvania, and as the questions raised are solely state questions requiring the construction of the State Constitution as to the forms to be followed in State legislation, and neither of these questions require construction of the Federal Constitution, it necessarily follows that the decision of the State Court is conclusive and will be followed in this court.

In *Miller vs. Cornwall Railroad Co.,* 168 U. S. 131, 134, Chief Justice Fuller said:

"We have no jurisdiction on a writ of error to a state court to declare a state law void on account of its collision with a state constitution.'

And again in *Leeper vs. Texas,* 139 U. S. 462, 467, the Chief Justice said:

"It must be regarded as settled that * * * * whether statutes of a legislature of a state have been

duly enacted in accordance with the requirements of the constitution of such state, is not a Federal question, and the decision of the state courts as to what are the laws of the State is binding upon courts of the United States." *Williams vs. Eggleston,* 170 U. S., 304, 311.

"When the state court decides that municipal corporations within the territorial limits of the State are subject to the control of the state legislature, and that its act in creating for certain purposes a new corporation, and *merging therein five separate towns, was valid, this court cannot hold that the state court was mistaken* in its construction *of the state constitution* or in its declaration as to the extent of the power of the legislature over municipal corporations."

ALLEGHENY CITY.

Allegheny City was not an original exceptant or remonstrant to the petition of the City of Pittsburg for the consolidation of the two cities, but after the case had been heard in the Court of Quarter Sessions and the order for election had been made and the election held, and the decree of the Court of Quarter Sessions made consolidating the two cities, the City of Allegheny on October 1st, 1906 (pp. 4-5), presented a petition to the Superior Court of the Commonwealth of Pennsylvania, where the case had been taken by appeal, praying

"Your Honors to permit it to intervene and become one of the appellants in the said proceeding at the above number and term."

The court thereupon made the following order (p. 5):

"And now, to-wit, October 1st, 1906, the foregoing petition presented, and upon consideration thereof the prayer of the petitioner is granted, and it is ordered that the said City of Allegheny shall be permitted to intervene and become one of the appellants in said proceed-

ings at No. 37 April Term, 1907, and that the record be amended accordingly.

By the Court."

The City of Allegheny did not file any additional or other exceptions than were filed by Hunter, et al. It made no averments of facts; it added nothing whatever to the pleadings in the case; made no new allegations or exceptions of any kind, but it was allowed to intervene, and after it did intervene, it stood upon the record already made, and in the different appeals from the Superior to the Supreme Court and from the Supreme Court of Pennsylvania to this Court, it added nothing whatever in the way of new exceptions or new allegations of fact.

The City of Allegheny never did allege that there was any contract relation between it and the State of Pennsylvania, or that it had any private property of any kind which would be affected by this consolidation. In no shape or form does the record show any property of the City of Allegheny which in any way would be affected by the consolidation. The sole averments of the pleadings in the State court on the question of property are hereinbefore given, and they do not contain any allegation whatever that the property of the City of Allegheny would be injuriously affected or affected at all by the consolidation. The sole basis of the exceptions was that it was the property of the exceptants, Hunter, et al., that would be affected, and the exceptions specifically point out that the manner in which the property would be injuriously affected would be by additional taxes and burdens. Nothing was said about the title of the property, nor the ownership of the property, and no objection whatever was made to the consolidation on the ground that Allegheny City had any property which would be affected by the consolidation.

As to the property in Allegheny City, the only assertion is in the 6th exception, which averred as follows: (p. 24)

"The City of Allegheny has improved its streets, established its own system of electric lighting, and has established a satisfactory water supply."

The City of Pittsburg answered this by saying (p. 229):

"And the averments in the 6th exception are denied as therein stated; but it is true that the City of Allegheny has to some extent improved its streets and has established a system of electric lighting. But it is denied that it has established a satisfactory water supply, and on the contrary, the one now existing is very unsatisfactory."

The present attempt to raise any question as to the constitutionality of the Pennsylvania Act on the ground that it affects property rights of the City of Allegheny and therefore the Act is in violation of the Federal Constitution, is unfounded as a question of fact.

No such facts appear in the record.

The question was not raised in the state court by exceptions or otherwise, and this the record of the case and the opinions of the Court of Quarter Sessions, of the Superior Court and the Supreme Court of the state, published at length in the record, fully show.

As that question was not raised in the State court, and the sole question that was raised was as to the private property of Hunter, et al., the individuals, being burdened with new taxation, and no question whatever was raised as to the title of any kind of property, this court will not consider it.

Rev. Stat. Section 709, provides for a writ or error from the decision of a state court when

"the decision is against the title, right, privilege or immunity *specifically set up or claimed.*"

In *Oxley Stave Company vs. Butler County*, 166 U. S. 648, this language was interpreted, and it was held that the Supreme Court

> "cannot review such final judgment, even if it denied some title, right, privilege or immunity of the unsuccessful party, unless it *appear from the record* that such title, right, privilege or immunity was *'specially set up or claimed'* in the state court *as belonging to such party*, under the Constitution or some treaty, statute, commission or authority of the United States."
> (p. 654-655)
>
> "These words were in the twenty-fifth section of the Judiciary Act of 1789 (I Stat. 85), and were inserted in order that the revisory power of this court should not extend to rights denied by the final judgment of the highest court of a State, unless the party claiming such rights *plainly and distinctly indicated*, before the state court disposed of the case, that they were claimed under the Constitution, treaties or statutes of the United States. The words 'specially set up or claimed' imply that if a party intends to invoke for the protection of his rights the Constitution of the United States or some treaty, statute, commission or authority of the United States, he must so declare 'specially,' that is *unmistakably*, this court is without authority to re-examine the final judgment of the state court."

In *Hoyt vs. Sheldon*, 1 *Black*, 518, 521, Chief Justice Taney held that it must appear from the record that the

> "section of the constitution was brought to the notice of the state court, *and the right which he now claims here claimed under it.*"

In *Clarke vs. McDade*, 165 U. S., 168, 172, it was held:

> "A general statement that the decision of a court is against the constitutional rights of the objecting

party or against the Fourteenth Amendment, or that it is without due process of law, particularly when these objection appear only in specifications of error, so-called, will not raise a Federal question."

Sully vs. American National Bank, 178 U. S., 289, 297.

In *Dewey vs. Des Moines*, 173 U. S., 193:

"It is not enough that there may be somewhere hidden in the record a question which, if raised, would be of a Federal nature.

(p. 200):

"A claim or right which has never been made or asserted cannot be said to have been denied by a judgement which does not refer to it. *Hamilton Company vs. Massachusetts, supra.* A point that was never raised cannot be said to have been decided adversely to a party, who never set it up or in any way alluded to it. *Nor can it be said that the necessary effect in law of a judgment, which is silent upon the question, is the denial of a claim or right which might have been involved therein, but which in fact was never in any way set up or spoken of."*

Keokuk & Hamilton Bridge Co. vs. Illinois, 175 U. S. 626.

New Orleans vs. New Orleans Water Co., 142 U. S., 79, 87, 88.

Applying the principle of this decision to the present case, we think that before we can be asked to determine whether a statute has impaired the obligation of a contract, *it should appear that there was a legal contract subject to impairment*, and some ground to believe that it has been impaired and that to constitute a violation of the provision against depriving any person of his property without due process of law, *it should appear that such person has a property in the particular thing of which he is alleged to have been deprived."*

So in our case these citizens of Allegheny did not raise the question of the impairment of any supposed contract of the City of Allegheny, and the city itself has made no objection of record.

From these decisions it is apparent that in order to confer jurisdiction on writ of error from a state court it is not sufficient merely to make a general reference to a clause of the federal constitution in an exception or specification of error. The imperative requirement is to indicate to the state court *specifically what right* and *whose right* is threatened.

Was the right claimed in the lower court a right of ownership in certain property, or a right of immunity from certain taxes. Was it a right of the municipal corporation of Allegheny or a right of the citizens who became parties to the consolidation proceedings?

The appellants did state specifically the right which they believed to be violated. It was a right that the property of these individual citizens of Allegheny be not depreciated in value by reason of the burden of certain additional and future taxes. But no reference was made to any right of property of the municipal corporation of Allegheny in any waterworks, electric light plant or other property in the hands of the city authorities. The decision of the court on the question of the asserted right of the citizens of Allegheny to immunity from taxation for municipal improvements in the former city of Pittsburg, in no way related to or affected the question of the right of the city of Allegheny, or of its inhabitants, in the property owned by the municipality.

Property Rights.

The merits of this question are not in doubt.

The Act of Pennsylvania in question as to the indebtednes and property of the cities provided as follows:

By Section 8, each city, it was provided, should pay its own floating and bonded indebtedness, and a tax should be levied on the property of each city to accomplish this, and jurisdiction was given to the Court of Quarter Session to ascertain the indebtedness of each city and the property of each city.

Section 9 of the Act provided as follows:

"All the citizens of each of the united cities and of the intervening land, shall be entitled to and shall enjoy and exercise full rights of citizenship in the said enlarged and consolidated city. All the rights of creditors and all liens and all the rights of the constitutent cities and of the government of the intervening land to enforce the payment of monies due either, on contract liabilities or of *other claims or rights of property* existing in either city or in the government of the intervening land, at the time of the annexation, shall be preserved unimpaired to each; and each of the said cities and the government of the intervening land, for the purpose of enforcing its rights and claims in the premises, and also of having prior rights and claims enforced against it, shall to be deemed in law to continue in existence.

Except as herein otherwise provided, all the property, real, personal and mixed, and the rights and privileges of every kind vested in or belonging to either of said cities, or to the intervening land, prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city."

As we have above insisted, there is no property whatever owned by the City of Allegheny in any form which might be

called *private property,* apart from and independent of municipal property held for municipal purposes. How this legislation would affect any private property so held by the city, if it held any (which it does not), and what the city could do or would do with that property, did not arise on the record, but paragraph 9th of the Act it will be noticed saves to each city its

> "claims or rights of property existing in either city * * * at the time of the annexation, shall be preserved unimpaired to each."

The record as to municipal property owned by Allegheny City and held for municipal purposes, only shows that the City has established a system of electric lighting, and also that it has established a water supply, which the Answer asserts is very unsatisfactory.

How this system of electric lighting has been arranged for by Allegheny City and what this title by which it holds either the electric light system or waterworks, is not known.

As to this municipal property held either by the City of Allegheny or the City of Pittsburg, what could possibly become of it except to vest it in the united city?

In that united city, Section 9 says:

> "All the citizens of each of the united cities and of the intervening land shall be entitled to and shall enjoy and exercise full rights of citizenship in the said enlarged and consolidated city."

While the question is not raised on the record, and was not raised or discussed in the State Court, can there be any question that such a provision is constitutional?

MUNICIPAL PROPERTY.

When two cities or boroughs are united, what becomes of their municipal property? Such property is not held by the City for any separate purpose of its own apart from its citizens. It is held by each municipality as trustee for the benefit of its citizens, and all the property is impressed with this municipal use. When the state merges the two cities, it makes one new municipal corporation, but the purposes and powers of the two old municipal corporations are united in the new.

Clearwater vs. Meredith, 1 Wallace, 40.
Shields vs. Ohio, 95 U. S. 323.

In this case Allegheny and Pittsburg form a new united corporation with the powers and municipal properties of each city vested in it and held for the identical uses which either corporation formerly held them, i. e., municipal purposes. The only change is that new persons, i. e., citizens of the other city come within the use. No citizen of Allegheny loses aught in the consolidation; each still has the right as a citizen of Allegheny or the United City to the use of the municipal property, and the sole change is that the citizens of Pittsburgh now also have the use of the municipal property. The citizens of each of the old cities now have the right to the use of the municipal properties of both cities; But no one or more citizens of Allegheny ever had the right to insist that he or they could prevent the state adding to it new property and new citizens. As a fact ,Allegheny City originally formed in 1840 by the State, was enlarged in 1868, 1870, 1872 and 1873 by adding to it new territory and new citizens, and this without the consent of the citizens of Allegheny or the City of Allegheny as a municipality. The City of Allegheny was only a municipal corporation, created by the state for the purposes of municipal government within certain defined territory, which territory the state enlarged as

it saw fit. All the purposes for which the city was created were municipal and public; All the property it held was for municipal and public purposes; No contract relation existed between Allegheny City and the state by which the power of the state over the City was restricted, but as the cases cited show, the state could abolish the city—change its government as it chose, or merge it with others, and even without its being so stated in the Act providing for the merger the result would have been that the municipal property of the old vested in the new city, vested then, however pledged and marked, to be held for municipal purposes just as it was held before, for always before the City of Allegheny held its municipal property subject to the right of the state to add to its citizenship—take from its citizenship—enlarge or lessen its boundaries.

It is said, however, that in this case, Allegheny City is annexed to Pittsburgh as if the State had given Allegheny City's property to the old City of Pittsburgh. This is an entire misapprehension of what the act does:

Section 8 provides:

"Except as herein otherwise provided, all the property real, personal, and mixed, and rights and privileges of every kind, vested in or belonging to either of said cities or to the intervening land prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city."

This provides for both the old cities. It is the property of each of the old cities that vests in the new consolidated or united city. It is not the property of Allegheny conveyed to Pittsburgh. It is the property of both Allegheny and Pittsburgh conveyed to the new united or consolidated city.

Section 9 also provided that:

> "All the citizens of each of the united cities, and of the intervening land, shall be netitled to and shall enjoy and exercise full rights of citizenship in the said enlarged and consolidated city."

Here each of the old cities is referred to. The words are

> "each of the united cities."

The citizens of each

> "shall be entitled to and shall enjoy and exercise full rights of citizenship in the said enlarged and consolidated city."

That is, in the new city, the united city, the consolidated city.

By its title (which in Pennsylvania is required to state its purpose) the act is one

> "to enable cities that are now or may hereafter be contiguous or in close proximity *to be united* with any intervening land other than boroughs *in one municipality;* providing for the *consequences of such consolidation.* * * *"

Section 1. If

"two cities shall be contiguous * * * the two * * * may be united and become one by annexing and consolidating the lesser city * * * with the greater city, and thus *making one consolidated city.*"

Section 2. provides that a petition may be filed

"praying that the two cities * * * shall be united and become one city."

Section 3 provides:

"The petition for annexation shall describe the boundaries of the proposed consolidated city."

Section 4 provides: At the election the people shall "vote for or against the proposed consolidation."
Section 7 provides for ascertaining whether the people "have voted in favor of the annexation or consolidation."

If they have, the court shall enter a decree "annexing and consolidating the lesser city * * * with the greater city *so that they form but one city and in the name of the greater or larger city.*"

Section 9:

"All the citizens of each of the united cities * * * shall be entitled to and shall enjoy and exercise full rights of citizenship in the said enlarged and consolidated city."

Subject to certain exceptions, the property of either city "shall be vested in and owned by the consolidated or united city."

Plainly this legislation provides for the merger or consolidation or uniting of two cities so that hereafter the two shall form but one. It was thought better in the general legislation to provide that the new city should bear the name of the larger of the two old cities, and therefore the legislation was put in the shape of annexing the lesser to the greater city so that the two together should form but one city. Where two cities are to unite to form a new city, it is entirely immaterial so far as the legal effect is concerned, as to whether you say that the two cities are united or that the lesser is an-

nexed to the greater or the greater is annexed to the lesser, for the same legal consequences follow whatever be the form of the expression. The united or new city is a new corporation holding all the properties of the old corporation (with possibly private exceptions which do not arise in this case) for the uses and benefit of the citizens of both of the old cities, who by the new legislation, are made citizens of the new and united city.

Such a merger or uniting or condensing does not, under any circumstances or in any light, deprive anybody of property and is not within either of the Federal prohibitions.

This court and other courts of last resort and the text book writers sustain this conclusion.

Let us assume, for argument's sake, that Allegheny and Pittsburgh each has a water works and electric light plants by which to supply the people of each city with light and water. Undoubtedly, as the cases cited show, and the decision of all the courts in Pennsylvania in this case shows, Pennsylvania may unite the two cities and make one new corporation, or she could annex the lesser to the greater city or the greater to the lesser. What shall be done with these two electric light and water plants of the old cities after the consolidation? What would you do with them if not vest them in the consolidated city? The consolidated city comprises the two old cities and the people of the two old cities, and if you vested the water works and electric light plants in the united city, the people of the two old cities would still enjoy them just as certainly as they did under the two separate corporate organizations. Neither Pittsburgh nor Allegheny as a municipal corporation ever had any beneficial property in the electric light or the water works plants. They held them merely for municipal purposes and as a trustee of the state. If the state then saw fit to change the trustee who held these two plants and say that instead of two trustees for the future

the two plants shall be held by one trustee, but held for the identical purpose for which they were formerly held, how can it be said that any one is deprived of any property right? Neither Allegheny City nor Pittsburgh ever had any property right. They held merely as trustees and as agent of the state and for the benefit of the people within their borders.

This Court said in:

Meriwether vs. Garrett, 102 U. S. Reports (S. C.) p. 513:

"In its streets, wharves, cemeteries, hospitals, court houses, and other public buildings, the corporation has no proprietary rights distinct from the trust for the public. It holds them for public use, and to no other use can they be appropriated without special legislative sanction. It would be a perversion of that trust to apply them to other uses. The courts can have nothing to do with them, unless appealed to on behalf of the public to prevent their diversion from the public use. The dissolution of the charter does not divest the trust so as to subject property of this kind to a liability from which it was previously exempt. *Upon the dissolution, the property passes under the immediate control of the State, the agency of the corporation then ceasing.* 2 *Dillon, Mun. Corp.*, sect. 445, 446; *Schaffer vs. Cadwallader*, 36 Pa. St. 126; *City of Davenport vs. Peoria Marine & Fire Insurance Co.*, 17 Iowa, 276; *Askins vs. Commonwealth*, 1 Duv. (Ky.) 275; *The President, etc. vs. City of Indianapolis*, 12 Ind. 620."

The state could, as it did, at any time, enlarge the boundaries of Allegheny City and add new people to it, and give these people the use of the electric light plants and water works, and no one ever supposed that the citizens of Alle-

gheny City or any of them could prevent this action of the state. If so, is it not evident that in effect this is what the state has done in this case so far as the electric light plants and the water works of Allegheny City are concerned? Each citizen of Allegheny, even though the legal title to the water works and the electric light plant vests in the united or consolidated city, still has the use of them to the same extent as he formerly did, and the only difference is that hereafter perhaps the people of Pittsburgh may also use them. The consolidation takes from the citizens of Allegheny nothing; leaves to them all their old rights, and gives to them, in addition, rights with reference to the electric light plants and the water system of Pittsburgh.

So far as Allegheny City itself is concerned, and in addition to the answer heretofore made with reference to the complaint of the individual citizens of Allegheny, Allegheny City, as a corporation, cannot complain. It never had a beneficial interest in these properties; the properties were held for a public, and not a private, use. The consolidated city or new city takes all the properties of either and both old cities charged with and subject to the identical trusts and obligations of either old city. The new city is merely a new trustee holding under the old trusts. This being so, the fact that the state saw fit, as it had the right to do, to change its trustee, to change its agent who should hold these properties for the public purposes of supplying light and heat, certainly interferes with no legal vested right of the City of Allegheny, for, as against the State of Pennsylvania the City of Allegheny has no vested right whatever.

If this position be not correct, and if Allegheny City or any other city, because it owned a water works or owned an electric light plant, could prevent consolidation and merger, the result would be that incidentally the city could perpetuate

its own existence. It could not very well be consolidated with any other city and make any reasonable disposition of its property except to vest it in the new and consolidated city. To say that you cannot when you merge two cities vest in the new corporation the municipal plants of each, is to prevent practically their merger at all in the future.

Massachusetts Cemetery case—

In *Mount Hope Cemetery vs. Boston*, 158 Mass., Reports, the Legislature passed an Act to compel the City of Boston to convey to the Mount Hope Cemetery Company the Cemetery called Mount Hope and which Boston owned. It vested the entire future management in this new private corporation and left the city powerless even to bury its dead in it except as to one portion. This duty was not impressed upon the new private company to bury the dead of Boston.

"Allen, J. Over property which a city or town has acquired and holds exclusively for the purposes deemed strictly public, that is, which the city or town holds merely as an agency of the State government for the performance of the strictly public duties devolved upon it, *the Legislature may exercise a control to the extent of requiring the city or town, without receiving compensation therefor, to transfer such property to some other agency of the government appointed to perform similar duties*, and to be used for similar purposes, or perhaps for other purposes strictly public in their character. This much is admitted on behalf of the city, and the doctrine is stated and illustrated in many decisions. *Weymouth & Braintree Fire District vs. County Commissioners*, 108 Mass, 142. *Whitney vs. Stow*, 111 Mass., 368. *Rawson vs. Spencer*, 113 Mass., 40. *Stone vs. Charlestown*, 114 Mass., 214. *Kingman, peti-*

tioner, 153 Mass., 566, 573. *Meriwether vs. Garrett,* 102 U. S. 472. *Mayor, etc., of Baltimore vs. State,* 15 Md. 376."

In effect the Court held that while the City of Boston was still burdened with the duty of burying its dead the Legislature took from it the cemetery held for that purpose and did not impress upon the new corporation the duty. That in Massachusetts cemeteries held by cities were not public but private property and that the Act in question was unconstitutional.

This case does not hold that Massachusetts could not have merged Boston with another city and vested the Cemetery in the consolidated city subject to the same uses and for the same purposes Boston held it. On the contrary inferentially it held that the Legislature could have done so, for it cited as binding it as authorities the following:

Whitney vs. Stow, Mass. Reports Vol. 111, page 372.

"The power of the Legislature to abolish, at its discretion, school districts or other districts, established by its authority for special municipal purposes, is undoubted. *Blackstone vs. Tafe,* 4 Gray, 250. *Weymouth & Brintree Fire District vs. County Commissioners,* 108 Mass., 142. It was equally within the constitutional power of the same Legislature which abolished the school districts and merged them in the town, and provided *for the transfer to the latter of the property of the former,* to charge the town with the whole or any part of the debts of the districts. The case falls within the principle upon which it has long been held that the Legislature, *on dividing one town or county into two,* or *annexing one town to another, may provide what part of the property of the first corporation* its *successors should take,* and what part of its obligations the latter should bear and

discharge; and that a provision as to the burden and payment of such obligations may be made either in the original act of division or annexation, or in a supplemental act passed at the same session. *Brewster vs. Harwich*, 4 Mass., 278. *Windham vs. Portland*. Ib. 384, 390.

Hampshire vs. Franklin 16 Mass, 76 85."

Rawson vs. Spencer Mass. Reports 113, page 45.

"Before their enactment, school districts were indeed *quasi* corporations with the power to hold property, to raise money by taxation for the support of schools, and with certain defined public duties. But they were public and political as distinguished from private corporations, and their rights and powers were held at the will of the Legislature, to be modified or abolished as public welfare might require. *The property held by them for public use was subject to such disposition in the promotion of the objects for which it was held, as the supreme legislative power might see fit to make.* The laws in question do nothing more; they provide for the transfer of public property and of a public duty connected with its use from one public corporation to another. In justice to those tax payers in districts where the property transferred exceeds the debts, allowances are made intended to equalize as to such taxpayers the common burden. There is no attempt to provide compensation in the sense in which compensation is required when private property is taken for public use under the right of eminent domain. The right here exercised is quite distinct from that, and requires no provision for compensation. *Whitney vs. Stow*, 111 Mass, 368. *Weymouth & Braintree Fire District vs. County Commissioners*, 108 Mass., 142. *Waldron vs. Lee*, 5 Pick, 323, 334. *Freeland vs. Hastings*, 10 Allen, 570, 579, 580."

Stone vs. Charlestown, Mass. Reports Vol. 114, p. 223.

"Counties, towns and cities, being but *quasi* corporations established mainly for political purposes, it is within the power, and has always been the practice, of the Legislature, in changing the boundaries of either, or in annexing one to another, to provide *how the property of the former corporations,* and the burden of paying their debts, shall be distributed among them. Such transfers of the property or of the debts of such corporations do not affect the obligation of the contracts previously made by either. *Brewster vs. Harwich,* 4 Mass., 278. *Windham vs. Portland,* Ib. 384, 390. *Hampshire vs. Franklin,* 16 Mass, 76 86. *Whitney vs. Stow,* 111 Mass., 368. *Bristol vs. New Chester,* 3 N. H. 524."

Kingman and Others, Petitioners, 153 Mass. Reports, p. 573.

"And in reference to these and other like burdens, it may be said in general, that it is within the proper province of the Legislature to determine where they shall rest, either in the first instance or finally. The Legislature may properly determine that the whole or a part of the cost shall be borne by the Commonwealth, or it may impose it wholly upon counties, or wholly upon towns, or a part upon each. And in doing so it is not necessarily limited by county or town lines. Indeed as has often been declared, the Legislature may change *county or town lines at will, and may provide how their respective properties and debts shall be shared* and adjusted. *Opinion of Justices,* 6 Cush, 578. *Stone vs. Charlestown,* 114 Mass, 214. *Coolidge vs. Brookline,* 114 Mass., 592. *Weymouth & Braintree Fire District vs. County Commissioners,* 108 Mass., 142. *Commonwealth vs. Plaisted,* 148 Mass. 375, 386. Instead of

changing lines, the Legistlature may apportion the burdens in such a manner as will tend to secure fairness and equality."

AUTHORITIES IN SUPPORT OF FOREGOING PROPOSITIONS..

In *East Hartford vs. Hartford Bridge Co.,* 10 Howard 534, this court said of Municipal Corporations:

"They are incorporated for public and not private objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders nor joint partners in any corporate estate which they can sell or devise to others or which can be attached or levied on for their debts."

New Orleans vs. Clark, 95 U. S., 644.

The City of Carrollton issued a series of bonds, payable to a gas company in consideration of the company's contract to light the city and supply its inhabitants with gas. The bonds were issued in violation of a statutory requirement and were invalid. Subsequently the legislature of Louisinana annexed the City of Carrollton to the City of New Orleans by a statute which provided that all property of the city of Carrollton be vested in the City of New Orleans and that the latter city should pay these invalid bonds. In an action by a bondholder against the City of New Orleans it was held this curative provision was constitutional because the city in issuing the bonds had acted in its capacity as a governmental agency subject to the control of the legilsature.

Mr. Justice Field (p. 654) said:

"A city is only a political subdivision of the State, made for the convenient administration of the government. It is an instrumentality, with powers more or less

enlarged, according to the requirements of the public, and which may be increased or repealed at the will of the legislature. In directing, therefore, a particular tax by such corporation, and the appropriation of the proceeds to some special municipal purpose, the legislature only exercises a power through its subordinate agent which it could exercise directly; and it does this only in another way when it directs such corporation to assume and pay a particular claim not legally binding for want of some formality in its creation, but for which the corporation has received an equivalent. *The People ex rel, Blanding vs. Burr,* 13 Cal., 343; *Town of Guilford vs. Supervisors of Chenango County,* 18 Barb. (N. Y.) 615; s. c. 13 N. Y. 143."

New Orleans vs. New Orleans Water Works Co.,
142 U. S., 79.

The charter of a water company conferred upon the company the exclusive right to supply water to the inhabitants of the city of New Orleans, and provided that the city receive water for municipal purposes free of charge, and that in consideration thereof the franchises and property of the company should be exempt from municipal taxation. Later amendments to the charter took away the immunity from taxation and required the city to pay for water used by it. A bill filed by tax payers of the city to enjoin the city from making payments to the company was dismissed by the Supreme Court of Louisinana. A writ of error sued out by the complainants was dismissed on motion on the ground that the record presented no federal question.

The court went into the merits and held that to deprive the city of its right to receive water free of charge did not impair the obligation of a contract or deprive the city of its property without due process of law.

In the opinion of the court, Mr. Justice Brown said:

"The city being a municipal corporation and the creature of the state legislature, does not stand in a position to claim the benefit of the constitutional provision in question, since its charter can be amended, changed or even abolished at the will of the legislature. In *The Dartmouth College Case,* 4 Wheat, 518, 660, 661, in which the inviolability of private charters was first asserted by this court, a distinction is taken, in the opinion of Mr. Justice Washington, between corporations for public government and those for private charity; and it is said that the first being for public advantage, are to be governed according to the law of the land; and that such a corporation may be controlled, and its constitution altered or amended by the government, in such manner as the public interest may require. 'Such legislative interferences cannot be said to impair the contract by which the corporation was formed, because there is in reality but one party to it, the trustees or governors of the corporation being merely the trustees for the public, the *cestui que* trust of the foundation.' Mr. Justice Story was also of opinion, page 694, that, 'corporations for mere public government, such as towns, cities and counties, may in many respects be subject to legislative control.'

In the case of *East Hartford vs. Hartford Bridge Company,* 10 How., 511, 533, 534, the constitutionality of an act of the legislature discontinuing a ferry, the franchise of which for more than hundred years had belonged to the town of Hartford, and subsequently to that of East Hartford, was drawn in question. It was claimed by the town that the State had impaired the obligation of its contract; but it was held that 'the parties to this grant did not, by their charter, stand in

the attitude toward each other of making a contract by it such as is contemplated in the Constitution, and as could not be modified by subsequent legislation. The legislature was acting here on the one part, and public municipal and political corporations on the other. * * * The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights and duties modified or abolished at any moment by the legislature. * * * Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and, therefore, to be considered as not violated by subsequent legislative changes.'

So in *Laramie County vs. Albany County,* 92 U. S., 307, 311, it was held that the legislature had power to diminish or enlarge the area of a county whenever the public convenience or necessity required. 'Institutions of the kind,' said Mr. Justice Clifford, 'whether called counties or towns, are the auxiliaries of the State in the important business of municipal rule, and cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between them and the legislature of the State, because there is not and cannot be any reciprocity of stipulation, and their objects and duties are utterly incompatible with everything of the nature of compact.' So in the recent case of *Williamson vs. New Jersey,* 130 U. S., 189, 199, it was held that the power of taxation on the part of a municipal corporation is not private property or a vested right of property in its hands; but the conferring of such power is an exercise by the legislature of a public and governmental power which cannot be imparted in perpetuity, and is always subject to revocation, modification

and control, and is not the subject of contract. Said Mr. Justice Blatchford: 'We are clearly of opinion that such a grant of the power of taxation, by the legislature of a State, does not form such a contract between the State and the township as it within the protection of the provision of the Constitution of the United States which forbids the passage by a State of a law impairing the obligation of contracts.'

At the last term of this court, in the case of *Essex Public Road Board vs. Shinkle,* 140 U. S., 334, it was held, the Chief Justice speaking for the court, that an executive agency created by a State for the purpose of improving public highways, and empowered to assess the cost of its improvements upon adjoining lands, and to purchase such lands as were delinquent in the payment of the assessment, did not by such purchase acquire a contract right in the land so bought, which the State could not modify without violating the provisions of the Constitution of the United States. But further *citations of authorities upon this point are unnecessary; they are full and conclusive to the point that the municipality, being a mere agent of the State, stands in its governmental or public character in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed or revoked, without the impairment of any constitutional obligation, while with respect to its private or proprietary rights and interests it may be entitled to the constitutional protection.* In this case the city has no more right to claim an immunity for its contract with the Water Work Company, than it would have had if such contract had been made directly with the State. The State, having authorized such contract, might revoke or modify it at its pleasure."

New Orleans vs. Morris, 105 U. S., 600.

A statute creating a private corporation, authorized the city of New Orleans to convey its *water works* to the corporation in return for shares of stock in the latter, and provided that the stock so received should not be liable to seizure for the debts of the city, but should be held by the city for the benefit of holders of bonds issued by the city for the construction of the waterworks. The city filed a bill to enjoin creditors from selling this stock on execution, and the creditors interposed a plea that the statute impaired the obligation of their contracts made prior to its enactment. Held that the obligation of the contracts was not impaired, because the waterworks themselves, being public property, had been exempt from execution.

Mr. Justice Miller (p. 602) said:

"The learned counsel, in the oral argument and in the brief, substantially concedes that the waterworks themselves,in the hands of the city, were not liable to be sold for the debts of the city. And if no such concession were made, we think it quit clear that *these works were of a character* which, like the wharves owned by the city, *were of such public utility and necessity, that they were held in trust for the use of the citizens.* In this respect they were the same as *public parks* and buildings, and were not liable to sale under execution for ordinary debts against the city."

(p. 604):

"In the next place, the city was not situated, as regards this property, as a private person would be in the purchase and acquisition of ordinary property. The city could not have sold this property as the law stood. It could not have put it into a joint-stock company without the aid of a new law."

City of Columbus vs. Town of Columbus, 82 Wis., 374, 16 L. R. A. 695 (1892):

The legislature erected a portion of the territory of the Town of Columbus, into a new municipal corporation, the City of Columbus. Within the territory annexed was a cemetery acquired by the Town of Columbus, by dedication and purchase. The charter of the new city provided that its citizens should enjoy the same rights in the cemetery as the citizens of the Town, and should contribute its just share of the expenses of maintenance. Another statute vested the powers of the Town Board over the cemetery in the city council.

The act was held to be constitutional for the reason:

"*The town holds the naked legal title to the cemetery grounds in trust for the inhabitants of the town and city, exclusively for burial purposes. The town has no beneficial interest whatever in the property. It is powerless to convey it for any other than burial purposes, without special legislative authority,* or to appropriate to its own use and portion of the proceeds of sales of burial lots. Such proceeds must all be used to pay for the cemetery grounds, and to defray the expenses of caring for, fencing, and embellishing the same. *Rev. Stat.* Secs. 1438-1440, inclusive. Because the town has no beneficial interest in the property, and because the use for which it holds the legal title thereto, in trust, is purely a public use, the fact that it holds the legal title is no impediment to the exercise by the Legislature in its discretion of the power to change the trustee, saving to the inhabitants of the town and city all their beneficial interests and rights in the trust property. The Act of 1876 merely changes such trustee and saves all the rights of the beneficiaries under the trust. It is therefore a

valid law. The authorities cited by counsel for the city in support of the power of the Legislature to change the trustee in such a case fully sustain it."

People vs. Ingersoll, 58 N. Y., 1, 21.

Allen, J., said:

"Property owned by a city, county or other municipality or local government, is held by it as a public corporation and subject to the law-making power, and the governing body, by whatever name called and known, are merely trustees for the public, who are the *cestui que trust* of the corporation. A municipal corporation is the trustee of the inhabitants of the territory embraced within its limits."

Coyle vs. McIntyre, 7 Houst. (Del) 44, (1884):

The legislature, without the consent of the inhabitants, created a board of water commissioners for the city of Wilmington and vested in it the control of the system of water works owned by that city. Control of the water works had previously been exercised by the city council. In a quo warranto proceeding on the relation of the appointee of the board to oust the chief engineer of the water works employed by the city council, judgment against the latter was affirmed. The contention that the waterworks was property owned by the municipality in a private capacity, and that hence the statute was unconstitutional as depriving the city of property without due process of law, was considered by the court at length and rejected. In the opinion of the court of errors and appeals Chancellor Saulsbury said: (pp. 94, 95, 96, 97, 98)

"The corporation is a public corporation. The uses for which the corporation may acquire and hold

property must necessarily, we think, be public uses. Uses beneficial, it may be in some respects to the public at large, but certainly beneficial to the citizens generally of the municipality who may be called a particular local public, although a part of the general public of the State. Such property cannot in any sense be said to be private in the sense in which property may be said to be private which is held by an individual citizen.

No citizen of Wilmington possesses any interest in the property of the municipality which is said to be private, which he can sell, or in any manner dispose of. No portion of any property held by the city passes to the local representatives of any inhabitant of the city or descends to his heirs upon his death; partition cannot be made of the real estate among the inhabitants in any manner known to law. Such property has not the incidents or qualities of private property attaching to property recognized as private among individual owners of property. * * *

The municipality may hold property in which all the inhabitants of a state or a county may be said to have an interest in some respect, but not as owners or proprietors. And it may also hold property in which the inhabitants of the municipality alone may properly be said to have an interest. Both classes of property are public. The one as to the people of the whole state or county, the other more particularly as to the inhabitants of the municipality.

It is only in this sense that the words *public* and *private* can with propriety be applied to such property when held by a municipality.

Although the property held for the municipality is in fact public as common to all the inhabitants of a city, it nevertheless may justly be said to be private

property as being such property as is exempt from being taken or applied to any other public use by the State, or by authority of the State, without compensation being made. * * *

While the municipality of Wilmington exists as a corporation, endowed with the capacity of purchasing and holding property, it has a right as against every other corporation or person to the use and enjoyment of its property as freely and fully as a private person can hold and enjoy similar property, but city corporations are emanations of the supreme law making power of the State and they are established for the more convenient government of the people within their limits.

In cities, for reasons partly technical and partly founded upon motives of convenience, the title of certain property is vested in the corporate body. It is not thereby shielded from the control to a certain extent of the Legislature as the supreme law making power of the State. While the corporation exists by authority of the State authorized to purchase and hold property for the inhabitants of the city to be paid for by the taxes levied upon the inhabitants, it would not, in our opinion, be competent for the State to take away such property and give it to other corporations or persons. * * *

The constituting a board of commissioners for the management of the property of a municipal corporation for the benefit of the corporators is *no diversion of the property from the purposes of its acquisition. No title is thereby divested, and no property is wrongfully taken.* In the case of the water works of the city of Wilmington, these works were not taken away from the city by the appointment of a board of commissioners to manage them; nor was their use diverted from its original purpose. Whether managed by the City Council or by the board of commissioners appointed by the authority of the Legis-

lature, the uses and purposes of the water works—the supply of water to the corporators or inhabitants of the city—will be the same, and while these purposes and objects continue the same we can see no violation by the act of the Legislature, of any equitable right of which the city may complain. * * *

We do not suppose that, if the powers conferred upon the board of water commissioners by the act of the Legislature creating it had by that act been conferred on the Council of Wilmington, any serious objection could or would have been made to the constitutionality of the act. If not, the controversy would be narrowed down to very small dimensions indeed. Has the City Council of Wilmington any vested or constitutional rights as against the State to manage or control the water works of the city of Wilmington or to appoint agents or managers to control them? They are the mere creatures of the Legislature, which can in a moment destroy, as in a moment it created them. The Legislature can divest the Council of any and every power and authority it possesses. It can direct that those powers should be exercised by any other department or agency of the city government and it could even direct that the functions now performed by the City Council should hereafter be performed by a like number of any other corporators of the city."

Brockenbrough vs. Board of Water Commissioners, 134 N. C., 1, (1903):

The legislature created a Board of Water Commissioners for the city of Charlotte, and transferred to it the title to the municipal water works, which was vested in the Board of Aldermen of the city. This was done without obtaining the consent of the city or its inhabitants. Subsequently, with the consent of the Board of Aldermen, an act was passed

authorizing the Board of Commissioners to mortgage the water-works to secure bonds issued to obtain funds to extend the plant. A bill filed by tax-payers to enjoin the execution of the mortgage was dismissed.

The court said: (pp. 16-17)

"That water works are held by the city or such *quasi* municipal corporations as may be established by the Legislature for such purpose for public use and for public purposes is clearly shown by the Supreme Court of the United States in *New Orleans vs. Morris,* 105 U. S. 65.

The plaintiffs suggest that the property purchased by the city by the Board of Aldermen, and by the Act of 1899 transferred to the Board of Water Commissioners, is impressed with a trust for the city, and for the purposes set out in this act, 'and that said board is bound in law to hold and operate the same upon the trusts aforesaid.' It is clear that the Legislature may, in aid of municipal government or for the purpose of discharging any municipal functions, or for any proper purpose, create municipal boards and confer upon them such powers and duties as in its judgment may seem best. * * * We do not understand that this power is questioned, or that the title to the property purchased by the city from the Charlotte City Water Company did not pass to and vest in the Board of Water Commissioners established by the Act of 1899."

The court summarized authorities cited by it thus: (p. 20)

"These and many other cases we have examined establish the doctrine that the water-works are held for the benefit of the public, and are therefore subject to legislative control."

David vs. Portland Water Committee, 14 Ore. 98: (1886):

An amendment to the charter of the city of Portland, (which had no power under its original charter to furnish a supply of water) provided that five persons named be created a committee with power to issue bonds in the name of the city and with the proceeds therefrom to establish a water system for the city; and that the maintenance of the system should subsequently be entrusted to a commission to be appointed by the governor of the state. This was done without obtaining the consent of the city or its inhabitants. A bill filed by a tax payer of the city to enjoin the committee from executing the power conferred by the legislature, was dismissed.

The contention of complainant that the power to establish a system of water works was exercised by a municipal corporation in a private capacity only and that hence the expense thereof could not be imposed on the city without its consent was answered thus: (122-123-124-125)

> "In all that class of cases cited by the respondent's counsel, where the authority has been denied, the decisions have been placed upon the ground that the power attempted to be exercised related to a private affair of the corporation. This class of decisions has in some instances undertaken to draw the lines between powers which are governmental in their nature, and those which relate to local convenience for the citizen, and to place those relating to water, gas and public parks, on the quasi private side of the corporation; and the respondent's counsel strenuously insist that these subjects *per se* relate to private affairs. I doubt whether such is the rule. Subjects of that character might, under some aspects, be regarded as belonging to the private affairs

of a corporation, but under others would be regarded as a public matter. The legislature is often the judge in such cases. It has frequently authorized municipal corporations to take land for a public park, for water works, and for bringing water into a town. (*Brooklyn Park Com'rs vs. Armstrong,* 45 N. Y .,234; *Kane vs. The Mayor, etc., of Baltimore,* 15 Md. 240; *Dill. Mun. Corp.* (3d ed.) Sec. 599; *Inhabitants of Wayland vs. County Com'rs. of Middlesex,* 4 Gray, 500. * * *)

Public parks, gas, water and sewage in towns and cities may ordinarily be classed as private affairs, but they often become matters of public importance; and when the legislature determine that there is a public necessity for their use in a certain locality, I do not think they can be designated as mere private affairs. That is a relative question. Take the case at bar. The city of Portland needs a supply of water. It has to be brought from some place outside of the city. The matter is presented to the legislature, and it determines that it is a matter of public necessity; that step should be taken to insure to the city wholesome water at cheap rates; and can it be claimed that it was a mere private affair, and the legislature had no authority to interfere with it?"

Fire Insurance Co. vs. Village of Keeseville, 148 N. Y., 46 (1895), reversing the decision of the lower court in 80 Hun., 162.

An insurance company sued a municipality to recover as damages the amount of loss it had been compelled to pay for the destruction of a building insured by it, alleging that failure to extinguish the fire had been due to the neglect of the city to repair its water system.

In holding the municipality not liable, because it operated its water system in a public governmental capacity, Mr. Justice Gray, for the Court of Appeals, said:

"The distinction between the public and private powers conferred upon municipal corporations, although the line of demarkation at times may be difficult to ascertain, is generally clear enough. It has been frequently the subject of judicial discussion and, among the numerous cases, it is sufficient to refer to *Bailey vs. The Mayor,* (3 Hill, 531; *Lloyd vs. The Mayor* (5 N. Y., 369) and *Maxmilian vs. The Mayor* (62 id. 160). The opinion in *Darlington vs. The Mayor* (31 N. Y. 164) is also instructive upon the subject. When we find that the power conferred has relation to public purposes and is for the public good, it is to be classified as governmental in its nature, and it appertains to the corporation in its political character. But when it relates to the accomplishment of private corporate purposes, in which the public is only indirectly concerned, it is private in its nature and the municipal corporations, in respect to its exercise, is regarded as a legal individual.

* * * * * * * **

When in addition to those general powers which are prescribed upon the creation of a municipal corporation, general statutes permit the assumption of further powers as a means of benefitting the portion of the public in the particular locality, they invest the corporation availing itself of the permission with just so much more governmental power. Just as the general powers deposited with the various municipalities are exercised by them in a quasi sovereign capacity, so would any added powers designed for the general public good, though optional with the corporation as to their assumption, and in their exercise and performance local, be exercised. They are not special, as being designed for

and granted to a particular municipality; for they are applicable to every part of the body politic where municipal government exists. Such powers in legal contemplation, appertain to the municipal corporation as such, and may be adopted as a part of the governmental system.

The acts, under which the defendant was authorized to construct and maintain a system of water works, constitute a general law, applicable to all incorporated villages in the state. They impose no duty and, when availed of, the task undertaken is discretionary in its character. The grant of power must be regarded as exclusively for public purposes and as belonging to the municipal corporation, when assumed, in its public, political or municipal character. In *Bailey vs. The Mayor,* (3 Hill, 531), to which reference is made in the opinion below, the city of New York, at a very early day, was authorized by special legislation to engage in the work of supplying its citizens with water and to acquire lands and water rights for the purpose and, as it is clear from the reading of the opinion of Chief Justice Nelson, the city was regarded in the light of any other private company, because of the special franchises conferred. Assuming that we could regard the doctrine of that case as authoritative at the present day, as to which there has been, and might be, some question, (see *Darlington vs. The Mayor, etc., of New York,* supra), the decision is inapplicable to the present case.

* * * * *

This defendant, precisely, is entrusted with the power to maintain its water works, because it is one of the political subdivisions of the state to which the general act has reference in its general grant of power or privilege.

Nor does the fact that water rents are paid by the inhabitants of the defendant affect the question. This

fact is made use of to show the private corporate character of the water works system; and the suggestion is that profit or benefits accrue to the defendant whereby the corporate undertaking is affected with a private interest. But that is an incorrect notion. The imposition of water rents is but a mode of taxation and a part of the general scheme for the purpose of raising revenue with which to carry on the work of the government. If profits accrue over the expense of the maintenance of the system, they go to benefit the public by lessening the general burden of taxation.

The fallacy, as it seems to me, which affects the argument that the municipal corporation can be made liable for the non-user or misuser of its power, consists in that it fails to appreciate the true nature of the function which the corporation performs. It adds to its political machinery for the purpose of benefitting and of protecting its inhabitants. There is nothing connected with the work, which is not of a governmental and public nature. It is in no sense a private business, and the authority to construct the works was given to it by the legislature, not at its own particular instance or application, but because it was one of the political subdivisions of the state and, as such, was entitled to exercise it. How could it justly be said that the maintenance of the water works system, any more than of a fire department, was a matter of private corporate interest? Is it not for all the in habitants and for their good and protection? No interest was designed to be subserved, other than that of adding to the powers of a community carrying on a local government. If that is true, the alternative is that being for public purposes and for the general welfare and protection, the defendant assumed a governmental function and comes under the sanction of the rule which exempts government from suits by citizens."

Memphis vs. Memphis Water Co., 52 Tenn., (5 Heisk) 495, 525 (1871).

Board of School Commissioners of Indianapolis vs. Center Township, 143 Ind., 391, 403 (1895).

The legislature annexed to a city that portion of a township which contained a public school building, and provided that the title to this property vest in the city, but did not require the city to compensate the township or to assume any of the indebtedness insured by the township in erecting the school building.

In holding this legislation constitutional the court said:

"The act did not interfere with vested rights, because the school township only held the title as we have seen as a trustee, and the State has the right, as it did in this act, to change the trustee."

New Orleans Gas. Co. vs. Louisiana Light Co., 115 U. S., 650, 658, 667.

"It is true, as suggested in argument, that the manufacture and distribution of illuminating gas, by means of pipes or conduits placed, under legislative authority, in the streets of a town or city, is a business of a public character. Under proper management, the business contributes very materially to the public convenience, while, in the absence of efficient supervision, it may disturb the comfort and endanger the health and property of the community. It also holds important relations to the public through the facilities furnished, by the lighting of streets with gas, for the detection and prevention of crime. An English historian, contrasting the London of his day with the London of the time when its streets, sup-

plied only with oil lamps, were scenes of nightly robberies, says that 'the adventurers in gas-lights did more for the prevention of crime than the government had done since the days of Alfred.' *Knight*, vol. 7, ch. 21; *Macaulay*, ch. 3. Municipal corporations constitute a part of the civil government of the State, and their streets are highways, which it is the province of government by appropriate means to render safe. To that end the lighting of streets is a matter of which the public may assume control. For these reasons, and the necessity of uniform regulations for the manufacture and distribution of gas for use by the community, we are of opinion that the supplying of it to the city of New Orleans, and to its inhabitants, by the means designated in the legislation of Louisiana, was an object for which the State could rightfully make provision. Authority for the positon that the supplying of gas to a city and its people may become a public purpose is found in *New Orleans vs. Clark*, 95 U. S. 644.

(669):

We have seen, the manufacture of gas, and its distribution for public and private use by means of pipes laid, under legislative authority, in the streets and ways of a city, is not an ordinary business in which every one may engage, but is a franchise belonging to the government, to be granted, for the accomplishment of public objects, to whomsoever, and upon what terms, it pleases. It is a business of a public nature, and meets a public necessity for which the State may make provision. It is one which, so far from affecting the public injuriously, has become one of the most important agencies of civilization, for the promotion of the public convenience and the public safety."

Darlington vs. Mayor ,etc., of New York, 31 N. Y., 164, 204.

Denio, C. J.:

"Nothing could, in the nature of things, partake less of a private character than the supplying of water to, and the cleaning of the streets of a town containing nearly a million of inhabitants. If these were not public subjects and under the control of the legislature, the city is not subordinate to the supreme legislative power on any conceivable subject. It is an *imperium in imperio.*"

Town of West Hartford vs. Board of Water Commissioners, 44 Conn., 360, 367, 369 (1877).

The reservoirs of the water system of the town of Hartford were situated within the territorial limits of the town of West Hartford. The latter city sought to tax this property on the ground that the former city, in view of the fact that it sold the water to its inhabitants for profit, owned and operated the works in a private capacity. The court held that this property could not be taxed for the reason:

(p. 367):

"Cities and towns are political corporations, local subdivisions of the state government by means of which, within specified territorial limits, public order is maintained, schools and highways are established, and public health preserved. They exist only for public purposes.

(p. 369):

"The introduction of a supply of water for the preservation of the health of its inhabitants by the city of Hartford is unquestionably now to be accepted as an undertaking for the public good in the judicial sense of that term; not indeed as the discharge of one of the

few governmental duties imposed upon it, but as ranking next in order. For this purpose the legislature invested the city with a portion of its sovereignty." * * *

In *Smith vs. Mayor of Nashville,* 88 Tenn., 464, 7 L. R. A., 469, (1890) it was held that a waterworks owned and operated by a municipality for the purpose of supplying water to its inhabitants at a profit, was not subject to a state privilege tax, for the reason that such works were held in a public capacity.

"As to that, for the sake of convenience, we divide all the purposes for which the City furnishes water into three classes: (1) to extinguishing fires and sprinkling the streets; (2) to supply citizens of the City; (3) to supplying persons and factories adjacent to but beyond the corporate limits. If the business were confined to the first class, there would be no ground to base a decision on, so clearly would the use be exclusively for public advantage. We think there can be but little more doubt about the second class, especially in view of certain words in the city charter, to which we will advert presently. Nothing should be of greater concern to a municipal corporation than the preservation of the good health of the inhabitants. Nothing can be more conducive to that end than a regular and sufficient supply of wholesome water, which common observation teaches all can be furnished in populous cities only through the instrumentalities of well-equipped waterworks. Hence, for a city to meet such a demand is to perform a public act, and confer a public blessing."

Dillon's Municipal Corporations, (3rd. Ed.), Section 67:

"This division of the powers and duties of a municipal corporation into two classes, one public and the other

private, has been before alluded to, and is, to our mind, far from satisfactory; and the private character thus ascribed to it, difficult exactly to comprehend. In what sense are powers conferred and to be exercised for the good of all the people of the place, private? Wherein do such powers, in their origin or nature, differ from those admitted to be public? Are not all powers conferred upon municipalities, whether many or few, given, and given only, for their better regulation and government, and to promote their welfare as parts of the state at large? The small municipality, with few and simple powers, is no more completely under the supreme dominion of the legislature than the more populous one, requiring for its proper government organs and powers peculiar to itself. Are the latter, therefore, *private?* If so, it must be in a qualified and peculiar sense. *Contracts in favor of the creditor are protected by the national constitution; but as against a state, what private powers and rights can a municipal corporation be said to have, when it is within the power of the state, which breathed into it the breath of life, utterly to extinguish its existence at pleasure? The distinction origtnated with the courts, to promote justice and to escape technical difficulties in order to hold such corporations liable to private actions."*

Darlington vs. Mayor, etc., of New York, 31 N. Y., 164, 196, 197 (1865).

Denio, C. J., said:

"But in what sense can this city property be said to be private? It certainly does not belong to the mayor or any or all of the members of the common council, nor to the common people as individual property. (*Roosevelt vs. Draper*, 23 N. Y., 318). If one of these

functionaries should appropriate it or its avails to his own use, it would be the crime of embezzlement, and if one of the people not clothed with official station should do the like it would be the offense of larceny. Should it be said that like all corporate property it belongs to the ideal being, the corporation, and that its title is beneficial and not fiduciary, that answer would not avoid the difficulty. Indeed it would not be sound. A corporation, as such, has no human wants to be supplied. It cannot eat or drink, or wear clothing, or live in houses. It is the representative or trustee of somebody, or of some aggregation of persons. We cannot conceive the idea of an aggregate corporation which does not hold its property and franchise for some use, public or private. The corporation of Dartmouth College was held to be the trustee of the donors, or of the youth needing education and moral and intellectual training. The corporation of New York, in my opinion, is the trustee of the inhabitants of that city. The property, in a general and substantial, although not a technical sense, is held in trust for them. They are the people of this State—inhabiting that particular subdivision of its territory—a fluctuating class constantly passing out of the scope of the trust by removal and death, and as constantly renewed by fresh accretions of population. It was granted for their use and is held for their benefit." (p. 196):

"Such legislative interference cannot be said to impair the contract by which the corporation was formed, because there is in reality but one party to it; the trustees or governors of the corporation being merely the trustees for the public, the *cestui que trust* of the corporation; (*Story's Com. on the Const.* Section 1, p. 387; *2 Kent Com.*, p. 275.) The expression of Chancellor Kent in the Commentaries that where a munici-

pal corporation is empowered to have and hold private property, such property is invested with the security of other private rights, is understood to mean only that it possess such rights *against wrongdoers, and not that it is exempted from legislative control.*"

Montpelier vs. East Montpelier, 29 Vt., 12, 21:

The original town of Montpelier held lands in trust to support a school for the benefit of its inhabitants. The legislature in most explicit language abolished the original town and erected the territory formerly included within its boundaries into two new municipalities; but made no provision for the existence of a trustee.

Held that the act was constitutional, though it destroyed the existence of the former trustee.

The Court said: (p. 21)

"But this principle must not be regarded as depriving the state of its power to alter or abolish the municipal organization of towns, when it is deemed necessary for public interests. If a town was organized for the purpose of aiding the state in sustaining its form of government, the power must necessarily reside in the state to abolish that organization, when it ceases to have that effect. That power is inherent in every state; it is part of its sovereignty, and the exercise of that right is necessary to establish and sustain its government. It is the greater right, to which all others are held subservient. It is not competent for a town, or any other mere municipal organization, which is made the trustee of such an estate or of any charity, to set up a vested right of that character as against the government, and thereby prevent the state from changing its political and municipal organization as the public interests may demand. If towns, by their charter, or in any other

way, are made trustees of such an estate for such purposes, their right and title as such is held subject to be defeated, whenever the state shall deem it necessary to abolish their existence as a town, or as a municipal organization."

Philadelphia vs. Fox, 64 Pa. 169, 182, 183:

1 Dillon on Municipal Corporations, Sec. 64:

A doctrine that a municipal corporation could, by the acquisition of property in a private or trust capacity, fortify itself against subsequent enlargement or consolidation by the legislature would annual a sovereign legislative function. Such a contention receives no support from the Fourteenth Amendment. The reasoning used by this court in holding that the clause of the Federal Constitution prohibiting the impairment of the obligation of contract did not protect a municipal charter from legislative repeal is applicable. The reason given by Chief Justice Marshall in Trustees of Dartmouth College *vs. Woodward*, 4 Wheat. 518, 628, was:

> "The clause would be an unprofitable and vexatious interference with the internal concerns of a state, would unnecessarily and unwisely embarrass its legislation, and *render immutable those civil institutions which are established for purposes of internal government, and which, to subserve those purposes, ought to vary with varying circumstances.*"

And in *East Hartford vs. Hartford Bridge Co.*, 10 How. 511, 534, the court in reaching a similar decision, reasoned:

> "It is hardly possible to conceive the grounds on which a different result could be vindicated, without destroying all legislative sovereignty, and checking most legislative improvements and amendments, as well as supervision over its subordinate public bodies."

EFFECT OF CONSOLIDATION.

THE CONSOLIDATED OR GREATER CITY WILL BE IN THE SAME CLASS AND UNDER THE SAME LAWS AS PITTSBURG AND ALLEGHENY CITY WERE PRIOR TO THE CONSOLIDATION.

In Pennsylvania (see *Purdon's Digest,* Vol. 3, page 2705) by the Act of June 25, 1895, P. L. 275, the cities in Pennsylvania were divided into three classes:

First. Those under One hundred thousand inhabitants:

Second. Those over One hundred thousand and less than One million:

Third. Those over One million.

The census for 1900 shows that Pittsburg has a population of 321,616.

Allegheny City has a population of 129,896.

Together they will have a population of 451,512. Each of the cities of Pittsburg and Allegheny before the consolidation was a city of the second class, and the united or consolidated city made up of both the old cities, will still be a city of the second class.

Its classification will not be changed.

THE ALLEGHENY CITY ACT OF 1870.

This Act created a new corporation and conveyed to it all the property of the old municipal corporation. The title of the Act was

> "To reduce the charter of the City of Allegheny and the several acts amendatory thereof, into one Act, and to revise the same."

Section 3 of chapter 5 of that Act (P. L. 729) provides that:

> "All property, real, personal or mixed of any nature whatsoever now belonging to the City of Allegheny *is hereby vested in the corporation created by this Act,* and their successors, to and for the use and benefit of said citizens forever."

This very Act then, conveyed the properties belonging to the old corporation, to wit:

> "the mayor, aldermen and citizens of Allegheny into a new corporation called the City of Allegheny."

It did exactly what the Act now under consideration proposes to do, to wit, vests the municipal properties of the two old municipal corporations into the new united and consolidated corporation or city but without changing the uses and purposes for which the properties are held by the old cities.

The fact that Section 1 of this Act of 1870 did give the power to the City of Allegheny to acquire and sell property, did not take away from the State of Pennsylvania the power to revoke the charter of the City of Allegheny, or add to the City of Allegheny or reduce the City of Allegheny or change its internal organization, or merge it with some other city, or borough or township, or appoint a new trustee for the property held by it, provided that the purposes and uses of the trust were not changed or denied.

No inference can be drawn from any language in this Act of 1870 that it was the purpose of the legislature to make irrevocable the charter of the City of Allegheny or prevent the State of Pennsylvania from revoking its charter or changing it or appointing a new trustee to hold the prop-

erty conveyed to it for municipal purposes. The Act contains no contract of that kind. Under the original *Dartmouth College case* and repeatedly recognized since, such legislation creates no contract with the State.

Indeed, the State of Pennsylvania has gone so far in giving to the legislature the absolute control over the municipal bodies, such as cities, that its Supreme Court held in the case of *Philadelphia vs. Fox,* 64 Pa., 169, as follows:

> "A municipal corporation is a public corporation created by the government for political purposes, having subordinate and local powers of legislation.
>
> "A municipal corporation is merely an agency instituted by the sovereign to carry out in detail the objects of government; revocable, and having no vested right to any of its powers or franchises."
>
> "The charter of a municipal corporation is not a contract with the State and is subject to the control of the legislature, who may enlarge or diminish its territorial extent or functions.
>
> "The legislature may modify the internal arrangements of a municipal corporation or destroy it.
>
> * * * * * * *
>
> "The legislature cannot by contract invest any municipal corporation with an irrevocable franchise of government over any part of its territory."

While a municipal corporation may be a trustee for various purposes and hold property for that purpose, the Supreme Court held that

> "A municipal organization, trustee of a charity, cannot set up a vested right to maintain such organization in the form in which it was when the trust was created, and prevent the State from changing it as the public interests may require."

See also:

East Hartford vs. Hartford Bridge Co., 10 How., 511.

And cases cited *supra.*

DELEGATION OF LEGISLATIVE POWER.

The Act of consolidation is not a delegation of legislative power.

Fallbrook Irrigation Co. vs. Bradley, 164 U. S., 112, 178.

A statute of California provided for the organization of portions of the state into public irrigation districts in the following manner: A petition, signed by fifty land owners and describing the boundaries of the proposed district, was to be presented to board of supervisors of the county; the board were to order a public election at which the residents of the proposed district might vote for or against its organization, canvass the votes, and if two-thirds of the votes cast were in favor of its organization, make an order declaring such territory duly organized as an irrigation district. The constitutionality of this act was attacked (see page 140) on the ground that it delegated to private citizens legislative power to decide the question whether a district school should be created.

This objection was answered by the Supreme Court in the language of Mr. Justice Peckham (p. 178):

> "An objection is also urged that it is delegating to others a legislative right, that of the incorporating of public corporations, inasmuch as the act vests in the supervisors and the people the right to say whether such a corporation shall be created, and it is said that the legislature cannot so delegate its power, and that any

act performed by such a corporation by means of which the property of the citizen is taken from him, either by the right of eminent domain or by assessment, results in taking such property without due process of law.

"We do not think there is any validity to the argument. The legislature delegates no power. It enacts conditions upon the performance of which the corporation shall be regarded as organized with the powers mentioned and described in the act."

Forsyth vs. Hammond, 166 U. S. 506, 519:

APPENDIX.

AN ACT for the sale of lands therein mentioned, for the purpose of redeeming and paying off the certificates of depreciation given to the officers and soldiers of the Pennsylvania line, or their representatives; and for appropriating certain other lands therein mentioned for the use of the said officers and soldiers, to be divided off to them severally at the end of the war.

SECTION. 1. Whereas it was enacted by a law of this commonwealth, passed the eighteenth day of December, in the year of our Lord one thousand seven hundred and eighty, entitled "An act to settle and adjust the accounts of the troops of this state, in the service of the United States, and for other purposes therein mentioned,' That the certificates of depreciation given to the officers and soldiers of the Pennsylvania line should be receivable at the Land Office of this state, equal to gold and silver, in the payment of the purchase money of unlocated lands, if the possessor or possessors of the same should think proper to purchase such lands.

..SECTION 2. Be it therefore enacted, and it is hereby enacted by the Representatives of the Freeman of the Commonwealth of Pennsylvania, in General assembly met, and by the authority of the same, That for the more speedy and effectual complying with the intentions of the law aforesaid, there be, and is hereby, located and laid off a certain tract of land, as follows: Beginning where the western boundary of this state crosses the Ohio river; thence up the said river to Fort Pitt; thence up the Allegheny River to the mouth of Mogulbughtiton Creek; thence by a west line to the western boundary of this state; thence south by the said boundary to the place of beginning; reserving to the use of the state three thousand acres, in an oblong of not less than one mile in depth from

the Allegheny and Ohio Rivers, and extending up and down the said rivers, from opposite Fort Pitt, so far as may be necessary to include the same; and the further quantity of three thousand acres on the Ohio, and on both sides of the mouth of Beaver Creek, including Fort Mackintosh; all which remaining tract of land, as aforesaid, is hereby appropriated as a farther fund for the purpose of redeeming the certificates aforesaid, and shall, for that purpose, be laid out and disposed of as follows; that is to say, the Surveyor-General of this state shall, according to such directions as may be given to him by the Supreme Executive Council, cause the aforesaid tract of land to be laid out into lots of not less than two hundred acres, nor more than three hundred and fifty acres each, numbering the same lots numerically on the draught or plot of the country aforesaid; and shall, as soon as the same, or one hundred lots thereof, are surveyed, together with the Secretary of the Land Office and the Receiver General, proceed to sell the same lots in numerical order, at such times and places, and under such regulations, as shall be appointed by the Supreme Executive Council; the full consideration bid at such sales shall be paid into the Receiver-General's office, either in gold or silver, or in the certificates aforesaid; upon full payment of which consideration, and the expense of surveying, together with all fees of the different offices, patents shall be issued in the usual form to the several buyers or vendees; and the different sums in specie that may be paid into the Receiver-General's office, shall be paid over by him to the treasury of this state, for the purpose of redeeming such certificates as may remain unsatisfied at the end of such sales.

Section III. And be it further enacted by the authority aforesaid, That the allowance or pay for laying out and returning into the Surveyor-General's office the lands herein directed to be laid out and sold, including wages to chainbearers and markers, and all other expenses incurred in lay-

ing out and returning the same for each lot, shall be the sum of three pounds ten shillings, which shall be paid in specie by the owners or purchasers of said lot or lots, before a patent shall be isued for the same.

SECTION IV. And whereas, the General Assembly of this commonwealth did, by their resolve of the seventh day of March, in the year of our Lord, one thousand seven hundred and eighty, promise to the officers and privates belonging to this state, in the federal army, certain donations and quantities of land, according to their several ranks, as therein set forth, to be surveyed and divided off to them severally at the end of the war.

SECTION V. Be it enacted by the authority aforesaid, That for the purpose of effectually complying with the letter and intention of said resolve, there be, and it is hereby declared to be located and laid off, a certain tract of country, beginning at the mouth of Mogulbughtiton creek; thence up the Allegheny River to the mouth of Cagnawaga creek; thence due north to the northern boundary of this state; thence west, by the said boundary, to the northwest corner of the state; thence south, by the western boundary of the state, to the northwest corner of lands appropriated by this act for discharging the certificates herein mentioned; and thence by the same lands east to the place of beginning; which said tract of country shall be reserved and set apart for the only and sole use of fulfilling and carrying into execution the said resolve.

SECTION VI. And be it further enacted by the authority aforesaid, That no improvement, location, warrant, grant, right, title or claim, whatsoever, made or procured by, from, or under any Indian nation, or nations of Indians, the late Proprietaries, or any other person or persons whatsoever, for or upon the lands contained within the limits of the two above described tracts of country or any part thereof, shall be valid, or of any effect, in law or equity, but the same shall be null and void, to all intents and purposes whatsoever.

SECTION VII. And be it further enacted by the authority aforesaid, That all officers and private men entitled to land as aforesaid shall, and they are hereby directed to make their respective applications for the same within two years after peace shall be declared; and should any of the said officers, non-commissioned officers, or private men, die before their respective applications shall be made, as before directed, then their heirs, executors or administrators, respectively, are hereby permitted to make such applications within one year after the expiration of the aforesaid time; and in case the said officers, non-commissioned officers and private men, their heirs, executors or administrators, shall neglect so to do within the times limited as aforesaid, then, and in such cases, it shall and may be lawful for any person or persons whatsoever to apply to the Land Office, locate and take up such parts or parcels of said lands, upon such terms as the Legislature shall hereafter direct; as may remain unlocated by the said officers, non-commissioned officers, and private men, their heirs, executors and administrators.

SECTION VIII. Provided always, and be it further enacted by the authority aforesaid, That it shall not be in the power of the non-commissioned officers and private men or any of them, to grant, bargain or sell his or their share of the land hereby appropriated for their use, or any part thereof, until the same shall be actually surveyed and laid off, as aforesaid, and that every such sale or conveyance shall be absolutely null and void, to all intents and purposes.

Passed March 12, 1783.

AN ACT to empower the Supreme Executive Council to lay out a town, and otherwise to apportion the lands contained in the tract of land reserved to the use of the state, by the act, entitled "An Act for the sale of certain lands therein mentioned, for the purpose of redeeming and paying off the certificates of depreciation, given to the officers and sol-

diers of the Pennsylvania line, or their representatives, and for appropriating certain other lands therein mentioned, for the use of the said officers and soldiers, to be divded off to them severally at the end of the war."

SECTION I. Whereas, by the Act of Assembly passed the twelfth day of March, in the year of our Lord one thousand seven hundred and eighty-three, for the purpose of redeeming and paying off the certificates of depreciation, given to the officers and soldiers of the Pennsylvania line, and for other purposes in the said act mentioned, a certain tract of land was reserved to the use of the state "containing (as in the said act is expressed), three thousand acres, in an oblong, of not less than one mile in depth from the Allegheny and Ohio Rivers, and extending up and down the said rivers, from opposite Fort Pitt, so far as may be necessary to include the same;" And whereas it appears that a sale of the said tracts, if laid out and disposed of to the best advantage, will furnish a considerable sum of money towards discharging the debts due by this state; Therefore, to attain the said end in the most serviceable manner to the state,

SECTION II. Be it enacted, and it is hereby enacted by the Representatives of the Freeman of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the President or Vice President in Council are hereby empowered to cause to be laid out and surveyed a town, in lots, with a competent and suitable number of out-lots, for the accommodation thereof, in the said tract, and to cause to be laid out and surveyed the residue of the said tract, in lots, which last mentioned lots shall not be less than one acre, nor more than ten acres each.

SECTION III. And be it further enacted by the authority aforesaid, That upon the return of such surveys, which are hereby directed to be made to the President or Vice President in Council, they shall, and are hereby authorized to sell the whole of the said lots, as they shall think most to the advantage of the state, and to convey the same.

SECTION IV. Provided always, and be it further enacted by the authority aforesaid, That the President or Vice President in Council shall reserve, out of the lots of the said town, for the use of the state, so much land as they shall deem necessary for a court-house, gaol and market-house, for places of public worship, and for burying the dead, and without the said town, one hundred acres, for a common pasture; and the streets, lanes, and alleys of the said town and out-lots shall be common highways forever; and that the sale of the said lots and out-lots herein mentioned, or any of the said lots or out-lots, shall be made in the town of Pittsburg, or in the City of Philadelphia, at the discretion of the Council, and, previous to the sale or sales in either place, notice shall be given in such newspapers of the said city, as they shall think proper, and also in the Pittsburg Gazette, of such sale, at least sixty days previous to such sale or sales.

SECTION V. And be it further enacted by the authority aforesaid, That the President or Vice President in Council is hereby empowered to draw an order or orders on the Treasury of this state, to defray the cost and charges of surveying, advertising and selling the lands aforesaid, to be paid by the Treasurer, out of the unappropriated public monies in his hands.

Passed 11th September, 1787.

AN ACT erecting the towns of Allegheny, Birmingham, Franklin and Northumberland into boroughs, and to give effect to the act incorporating the borough of Elizabethtown, in the county of Lancaster.

SECTION I. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That Allegheny town in the County of Allegheny, shall be and the same is hereby erected into a borough, which shall be called Allegheny, shall be comprised within

the following boundaries, to wit: Beginning on the bank of the Allegheny River at the upper corner of East Lane, thence along the upper or Northeast side of said lane to the northwest side of the Pittsburg and Butler turnpike road, thence along the same to the line between out lots numbered one hundred and forty, and one hundred and forty-five, thence north fourteen degrees, west by the line between out lots one hundred and forty and one hundred and forty-five, one hundred and forty-one, one hundred and forty-four, one hundred and forty-two and one hundred and forty-three, to the high rough tract, thence by the same south seventy-six degrees, west to out lot number one hundred and forty-eight, thence north fourteen degrees, west by the line of out lots one hundred and forty-eight, one hundred and forty-nine and one hundred and fifty, to the northeast corner or lot number one hundred and fifty, thence south seventy-six degrees west by the line running between out lots one hundred and fifty, one hundred and fifty-one, one hundred and seventy-four, one hundred and seventy-five, one hundred and eighty-two and one hundred and eighty-three, to the southwest side of Pasture lane, thence by the same south fourteen degrees, east to the northwest corner of Water lane, thence by Water lane south seventy-six degrees west, to the southwest side of Ferry lane, thence by the same south fourteen degrees, east to the middle of the Ohio river, thence by a line up the middle of the same and of the Allegheny river along the line of the city of Pittsburg to a point opposite the place of beginning, thence by a straight line to the place of beginning.

Section 2. And be it further enacted by the authority aforesaid, That it shall and may be lawful for all persons entitled to vote for members of the legislature, who have resided in the said borough six months previously to such election, to meet at the house now occupied by Robert Campbell, on the second Tuesday in May, in every year, and then and there

elect by ballot between the hours of twelve and six o'clock of the same day, one reputable citizen residing therein, who shall be styled "The Burgess of said Borough," and nine citizens residing therein who shall be a town council, but previously to such election the inhabitants shall elect two reputable citizens as judges, one as inspector and two as clerks of the said election, which shall be regulated and conducted according to the general election law of this commonwealth, so far as relates to receiving and counting votes, and who shall be subject to the same penalties for malpractices as by the said law is imposed, and the said judges, inspector and clerks, before they enter upon the duties of their offices, shall each take an oath or affirmation before any justice of the peace of said county to perform the same with fidelity, and after said election shall be closed, shall declare the person having the greatest number of votes to be duly elected, and in case any two or more candidates shall have an equal number of votes, the preference shall be determined by lot, to be drawn by the judges and inspector, whereupon duplicate returns thereof shall be signed by the said judges, one of which shall be transmitted to each of the persons elected, and the other filed among the records of the corporation, and in case of death, resignation, removal, refusal to accept, or neglect or refusal to act after acceptance, of any of said officers, the burgess or in case of his death, absence or inability to act, or when he neglects or refuses to act, the first named of the town council shall issue his precept directed to the high constable, or when there is no high constable or where he refuses or neglects to act, then any of the members of the town council shall advertise and hold an election in the manner aforesaid, to supply such vacancy, giving at least ten days' notice thereof, by advertisements set up at four of the most public places in the said borough.

Section 3. And be it further enacted by the authority aforesaid, That from and after the second Tuesday in May next, the burgess and town council duly elected as aforesaid,

and their successors, shall be one body politic and corporate in law, by the name and style of "The burgess and council of Allegheny," and shall have perpetual succession, and the said burgess and council aforesaid and their successors shall be capable in law, to receive, hold and possess goods and chattels, lands and tenements, rents, liberties, jurisdictions, franchises, hereditaments, to them and their successors in fee simple or otherwise, and not exceeding the yearly value of five thousand dollars and also to give, grant, sell, let and assign the same lands, tenements, hereditaments, rents, and by the name and style aforesaid, they shall be capable in law to sue and be sued, plead and be impleaded in any of the courts of law in this commonwealth, in all manner of actions whatsoever, and to have and to use one common seal, and the same from time to time at their will to change and alter.

SECTION 4. And be it further enacted by the authority aforesaid, That if any person, an inhabitant of the said borough and duly qualified to elect as aforesaid, shall be elected to the office of burgess, and having notice of his election, shall refuse to undertake and execute that office, every person so refusing, shall forfeit and pay a fine of ten dollars, and if any other person, duly qualified as aforesaid, shall be duly elected to any other office in said borough, enacted by this act and having notice of his election, shall refuse to undertake and execute the duties of that office, every person so refusing shall forfeit and pay a fine of five dollars, which fine forfeitures and all others, in pursuance of this act or of the by-laws of the said council, shall be recoverable before any justice of the peace, of said county, for the use of said corporation; Provided, that no person shall be compelled to serve more than one year in any term of four years, and that if any person or persons shall conceive himself or themselves aggrieved by the judgment of any justice of the peace, by virtue of this act, he or they may appeal to the next county court of common pleas, upon giving security according to law, to

prosecute his or their appeal to effect, who shall on the petition of the party, take such order therein as to them shall appear just and reasonable, and the same shall be conclusive to all parties.

SECTION 5. And be it further enacted by the authority aforesaid, That the burgess shall take and subscribe an oath or affirmation before one of the associate judges or a justice of the peace, for the county of Allegheny, to support the constitution of the United States and of this state, and an oath or affirmation well and truly to execute the office of burgess of the borough of Allegheny; and when so qualified he shall administer an oath or affirmation to the council, high constable and town clerk, in manner and form aforesaid; before they shall enter on the duties of their respective offices, the certificates of which oaths and affirmations shall be filed among the records of the said corporation.

SECTION 6. And be it further enacted by the authority aforesaid, That the town council so chosen or a majority of them, shall have full power and authority to make and enact such ordinances, rules and regulations, as may be necessary for improving and keeping in order the streets, lanes, alleys, public squares and common ground belonging to said town within the said borough, and removing nuisances or obstructions therefrom, and the same to annul, alter or make anew, as occasion may require, and also to assess, levy and collect a tax for said purposes, and also annually to appoint a town clerk, treasurer and such other officers as may be deemed necessary, and shall have all other powers necessary for the well ordering and better government of the said borough; Provided, that the said ordinances, rules or regulations shall not be repugnant to the constitution or laws of the United States or of this commonwealth; And provided also, that no tax shall be laid by them in any one year to exceed one-half of one per cent. on the dollar, on the valuation of taxable property, taken from the last assessment, unless some object of

general utility shall be thought necessary, in which case a majority of the freeholders of said borough by writing under their hands shall approve and certify the same to the town council, who shall proceed to assess the same accordingly, and all taxes which may be assessed or laid within the said borough, shall as nearly as the same is practicable, be assessed and collected conformably to the laws for raising county rates and levies.

SECTION 7. And be it further enacted by the authority aforesaid, That it shall be the duty of the town clerk to attend all meetings of the town council, when assembled on business of the corporation, and perform the duty of clerk thereto, and keep and preserve the common seal and records of the corporation, and be answerable for the same, and also for the faithful discharge of all duties which may be enjoined upon him by virtue of this act, or the acts of the corporation, and his attestation, with the seal of the corporation, shall be good evidence of the thing or act so certified.

SECTION 8. And be it further enacted by the authority aforesaid, That the treasurer shall give security for the faithful discharge of the duties of his office, and for the safe delivery into the hands of his successors of all moneys, books and accounts appertaining thereto, upon demand being made by the burgess for that purpose.

SECTION 9. And be it further enacted by the authority aforesaid, That the street commissioners, treasurer, constable and clerk of the market, as well as all other officers who may be appointed by the corporation or council, shall render their accounts to the council once in every year for settlement, and the said accounts being adjusted and settled accordingly, shall be forthwith published by the said council showing particularly the amount of taxes laid and collected and of the expenditures.

SECTION 10. And be it further enacted by the authority aforesaid, That it shall be the duty of the high constable to give notice of the elections by setting up advertisements

in three public places in the said borough, ten days previously thereto, and shall attend and see that the same is opened at the time, and in the manner directed by this act.

SECTION 11. And be it further enacted by the authority aforesaid, That the said borough of Allegheny is hereby erected into a separate election district, and the electors thereof, and those electors resident within the bounds of the reserved tract of Ross Township, opposite Pittsburg, shall hereafter hold their elections at the house now occupied by Robert Campbell in said borough.

SECTION 12. And be it further enacted by the authority aforesaid, That it shall and may be lawful for all persons entitled by law to vote for burgesses and other officers of the borough of Allegheny, at the same time and place, where they vote for said officers to elect two reputable citizens of said borough, and return the names of the persons so elected, to the next court of quarter sessions of the said county, one of whom shall be appointed constable of said borough in the same manner, with like power and authority, and subject to the same regulations and penalties, as are provided and contained in the laws now existing or that may be hereafter passed concerning constables, within this commonwealth, and all manner of process, which may by law be directed to the constable of any township, in the said county, may in the same manner, be directed to the constable of the said borough, whose duty it shall be to execute the same according to law. And the constable so appointed shall do and perform all the duties required to be done by the high constable of said borough, in pursuance of this act and of the by-laws and ordinances of said borough.

Approved April 14th, 1828.

AN ACT

To incorporate the City of Allegheny.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*: That the inhabitants of the borough of Allegheny, in the county of Allegheny, as the same extends and is now incorporated, are hereby constituted a corporation and body politic, by the name and style of "The Mayor, Aldermen and Citizens of Allegheny," and by the same name shall have perpetual succession, and they and their successors by such name, shall at all times for ever be able and capable in law, to have, purchase, receive, possess and enjoy lands, tenements and hereditaments, liberties, franchises and jurisdictions, goods, chattels, and effects, to them and their successors for ever, or for any other or less estate, and the same lands, tenements, hereditaments, goods, chattels and effects, by such name to grant, bargain, sell, alien, convey, mortgage, pledge, charge and encumber, or demise and dispose of at their will and pleasure, and by the said name, shall be able and capable in law to sue and be sued, plead or be impleaded, answer and be answered unto, defend and be defended in all courts of record and elsewhere, in all manner of suits, actions, complaints, pleas, causes, matters and things, that to the said city as a body politic and corporate in law, and in fact shall and may appertain, and for that purpose shall have and use one common seal, and the same from time to time may change, alter, deface and make anew.

SECTION 2. That the freemen of the said city of Allegheny, citizens of the state, or of the United States, who have resided within the bounds of the said city at least ten days immediately preceding the election, and within that time paid a borough or city tax, shall meet in their respective wards as hereinafter designated or as may be at any fu-

ture time designated by the select and common councils on the second Tuesday in July next and on the second Tuesday in January following and yearly thereafter; and elect by ballot one of the aldermen of said city, or any other citizen thereof, as mayor of the said city, and at the same times and places elect by ballot four persons for each ward, qualified to serve as members of the House of Representatives of this Commonwealth, to be members of the common council of the said city, who shall hold their offices until the next following election thereafter, and until their successors are duly qualified, and also at the first election aforesaid, three persons for each ward qualified to serve as Senators of this Commonwealth to be members of the select council of the said city, who shall forthwith after their election in each ward divide themselves by lot into three classes, the seats of the first class to be vacated on the second Tuesday in January next; of the second class at the expiration of the first year, and of the third class at the expiration of the second year thereafter, so that one-third may be chosen in each and every ward, that is to say, one person for each and every ward every year after the first election, to be held on the second Tuesday in July next; and the first election to be held under this act, shall be held and conducted by the burgess and town council of the borough of Allegheny, at such places as may be appointed by them in each of the wards of the said city, and all elections thereafter, shall be held and conducted by the aldermen of the said city, or any four of them, who shall take the usual oaths or affirmations, as prescribed by the general election laws of this commonwealth, to be taken by the judges and inspectors of the general elections; and shall have power to appoint clerks of such elections, and to administer the necessary oaths to such clerks; and when each election to be had and held pursuant to this act shall be closed, and the number of votes for each candidate or person voted for shall

be counted and ascertained, the persons herein authorized to hold and conduct such election, or a majority of them, shall prepare and make under their respective hands and seals, a return thereof, containing the names of the mayor, and the name of each select and common council man, elect as the case may be, with the number of votes in favor of each of them, and shall within twenty-four hours after the closing of each of the said elections, give notice in writing to the mayor elect, and to each of the said select and common council men elect of their respective elections, as the case may be, and shall also deliver such return to the select and common councils elect at the times and places in and by this act appointed for them respectively to meet and receive the same, and the said returns shall thereafter be deposited and preserved with the clerks of each council respectively; and the said elections shall be conducted in all other respects as is now prescribed by the existing laws of this commonwealth, and it shall be the duty of the mayor of the said city to give at least ten days previous notice of the time and places of holding such elections.

SECTION 3. That the said city shall be divided into four wards, in the manner following: All that part of the city embraced between the Allegheny river and Ohio street, and lying west of Federal street, shall constitute the first ward; all that part north of Ohio street and west of Federal street, shall constitute the second ward; all that part north of Ohio street and east of Federal street, shall constitute the third ward; and all that part between the Allegheny river and Ohio street and east of Federal street, shall constitute the fourth ward.

SECTION 4. That it shall be lawful for the qualified electors of the aforesaid wards, and such other ward or wards as may be hereafter created and established, under the same provisions and regulations, as are prescribed by the act relating to the elections of this commonwealth, passed

the second of July, one thousand eight hundred and thirty-nine, on the day first herein appointed for the election of members of the select and common councils, and on the second Tuesday of January following, and yearly thereafter, to elect two inspectors and one judge of said election, and according to the provisions and regulations of an act providing for the election of aldermen and justices of the peace, passed the twenty-first of June, one thousand eight hundred and thirty-nine, on the said second Tuesday of January, two aldermen for each of the wards of the said city, except the ward or wards where justices of the peace now in commission reside, who are hereby declared to be aldermen of the said city, or if the said justice reside in separate wards, the electors are hereby authorized to choose one alderman for each of said wards, so that not more than eight aldermen shall be commissioned for said city, who shall hold their offices for the time prescribed by the constitution of the commonwealth, and shall have, respectively and severally, all the powers, jurisdictions, authorities, fees, and perquisites of justices of the peace of the commonwealth. And on the said second Tuesday of January, and on the same day annually thereafter, the said electors of the said city are hereby authorized to choose for each of said wards constables and assessors, as is prescribed by the several acts of the commonwealth for the election of constables and assessors, and the constables and assessor or assessors who may be chosen, pursuant to said laws, prior to the said second Tuesday in January next, shall hold their offices until said day and no longer. And the inspectors, judges, and clerks of the general election, shall meet at the places designated by the councils, within the limits of their respective wards, and proceed, in all respects, according to the provisions of the act of the second of July, one thousand eight hundred and thirty-nine: *Provided*, That it shall not be lawful for any inhabitant of the said city, to vote at any other place except within the ward where he may reside.

SECTION 5. That the said select and common council men elect, shall meet at such places, in the said city, as the said councils, each for its own body, may, after the first election, agree upon, and afterwards at such places as by ordinance duly passed, may be fixed for that purpose, between the hours of ten and twelve of the clock in the forenoon, on the Friday next following each, and every election, of select and common council men, to be held in pursuance of this act, and shall then and there receive the returns aforesaid, and shall forthwith proceed to examine the same and to judge and determine thereon, and for that purpose, and to the end and intent that this act, or the provisions herein contained, may not be ineffectual, the said select or common council men elect, as the case may be, who shall be elected and returned as aforesaid, or a majority of them who shall be a quorum for all business, shall be judges of their own elections and shall have full power and authority to approve thereof or to set aside the same, or afterwards to vacate the seat of any member for misbehavior, neglect of duty, or other misdemeanor, and to order new elections, as the law may require to be held, at such times as shall be by such council respectively appointed, of which they shall give at least six days previous notice, in one or more of the public papers printed in the said city, which election shall be held by the persons herein authorized to hold and conduct the annual elections of said city, who are hereby enjoined to do and perform the duties herein required of them at such special or occasional election, and to make return of such election in manner as aforesaid, and so, in like manner, as often as occasion may require, upon the death or resignation of a member or members of either of the said councils.

SECTION 6. That each and every select and common councilman who shall be elected, chosen and returned in manner aforesaid, and whose election shall be so, as aforesaid,

approved of, shall, before he enters on the execution of his office, take a solemn oath or affirmation before the president or one of the judges of the court of common pleas of the county of Allegheny, or before the mayor of said city, for the time being, "well and faithfully to execute the office of a select councilman or of a common councilman (as the case may be) of said city, "and shall thereupon, without any further or other commission, enter upon the duties thereof, and shall hold and exercise the same until the term of office therein shall expire as directed in and by this act.

SECTION 7. That the power of the corporation of the said city shall be vested in the said select and common councils, who shall have full power and authority to make, ordain, constitute and establish such and so many laws, ordinances, regulations and constitutions (provided the same shall not be repugnant to the laws and constitution of the United States or of this commonwealth) as shall be necessary or convenient for the government and welfare of the said City, and the same to enforce, put in use and execution by constables and other proper officers, whom they shall have power to appoint, and at their pleasure to revoke, alter, and make anew as occasion may require, and shall have, hold and enjoy in addition to the powers now vested in the borough of Allegheny, which are hereby transferred to and vested in the said councils, all the powers and authorities now vested by law in the select and common councils of the city of Philadelphia.

SECTION 8. That in order that a knowledge of the said laws, ordinances, regulations and constitutions may at all times be had and obtained, and the publications thereof at all times be known and ascertained, such and so many of them as shall not be published in one or more of the public newspapers published in the said city, or in such other way as the select and common councils may direct, within fifteen days from and after their being severally passed, ordained and established, and also recorded in the office of recorder of

deeds in and for the county of Allegheny, (who shall keep a separate book for that purpose, and shall be allowed and paid for recording thereof, at the same rates as are allowed by law for recording deeds), within thirty days from and after their being so, as aforesaid, passed, ordained and established, shall be null and void, and before any of the said laws, ordinances, regulations and constitutions shall be so, as aforesaid, recorded; the publications thereof respectively with the times thereof shall be proved by oath or solemn affirmation of some credible person, which said oath or affirmation shall be recorded therewith, and at all times be deemed and taken as sufficient evidence of the time of such publication.

Section 9. That the doors of the respective halls of the said select and common councils shall be open for the admission of all peaceable and orderly persons who shall be desirous of being present at the discussion of any by-laws, ordinances, rules or regulations, for the welfare and good government of the said city.

Section 10. That it shall be the duty of the mayor to promulgate the by-laws, rules and ordinances of the corporation, and specially to attend to the due execution and fulfillment of the same, and he shall be entitled to receive, hold and enjoy all the emoluments which by the laws and ordinances of the corporation may hereafter be annexed and attached to the office of mayor, and the mayor-elect shall take a solemn oath or affirmation before the president or an associate judge of the court of Common Pleas of Allegheny County, "well and faithfully to execute the office of mayor of said city," and shall thereupon enter upon and perform the duties of the said office without any further or other commission, and shall continue in office until a successor shall be duly elected and qualified, and in case of the death, resignation or removal of the mayor or other vacancy in the said office, such vacancy shall be filled by a new election for the remainder of his term of office by the said councils within

ten days thereafter, and at least five days' notice shall be given in the public newspapers of the city, or, if there be no newspaper published therein, by written or printed handbills, of the time of holding the same, and until the said vacancy is filled by a new election, the select and common councils shall appoint a mayor to act *pro tempore*.

SECTION 11. That the select and common councils of the said city be, and they are hereby authorized and empowered to pass ordinances to prevent any person or persons from erecting or causing to be erected any wooden mansion, house, store, shop, ware-house, carriage-house, or stable within such parts of the said city as the said councils shall by their ordinances from time to time describe and limit.

SECTION 12. That the select and common councils of the said city shall cause to be made a draft or plan thereof in which shall be distinctly marked the streets, lanes and alleys therein, which said draft or plan shall be filed in the office of the city regulator and shall be always open to public inspection, and the said councils shall have, exercise and enjoy all the powers, authorities and jurisdiction touching the opening, extending, widening or otherwise altering of streets, lanes and alleys within the said city, as are now exercised or enjoyed by the select and common councils of the city of Pittsburg; and all the general provisions of the several acts of assembly now in force and touching or relating to the opening, widening, extending or otherwise altering of streets, lanes and alleys within the said city of Pittsburg, are hereby extended to and made apart of the charter of the said city of Allegheny.

SECTION 13. That the right of this commonwealth to all the lands within the limits of the said city of Allegheny, mentioned in the fourth section of the act of assembly of the eleventh of September, one thousand seven hundred and eighty-seven, excepting such parts thereof as have heretofore been appropriated by grant and authority of law, is

hereby granted and vested in the said city of Allegheny for such public uses as are recited in said act, and such other public uses as the select and common councils may from time to time direct and ordain: *Provided, however,* That no part of the said land allotted by the said fourth section of the act of one thousand seven hundred and eighty-seven for a common, shall be applied to any other purpose, without releases first being had and obtained from such persons as are entitled to a right of common in such land, or from as many such persons as may by law grant a right to the whole or any part of said common.

SECTION 14. That the select and common councils of the said city may, whenever they deem it necessary, confer upon the Mayor and aldermen of the said city, the jurisdiction, power and authority to recover summarily, or by penal action, as the case may be, any fines and forfeitures inflicted for the violation of the provisions of any ordinances which may hereafter be enacted and ordained by the said councils for the government of the said city; *Provided,* That the said fines and forfeitures do not exceed one hundred dollars;; *And provided further,* That in all summary convictions where fines, forfeitures and imprisonment are inflicted, the person or persons convicted may appeal to the next court of Quarter Sessions of the county of Allegheny, within ten days after conviction and entering security, approved by the mayor or alderman before whom the conviction has been entered.

SECTION 15. And to the further end and intent that there may not be a failure of justice within the said city by reason of any person or persons who may be charged with having committed any offence or offences, therein lurking, or being in secret, or other places in the neighborhood thereof, it shall be lawful for any constable or constables of the said city to whom any warrant, under the hand and seal of the said aldermen, or any of them, shall be delivered, commanding him or them to take any person or persons who shall have

been charged with having committed any offence within the said city, and to bring him, her or them before the said aldermen, or any of them, and he and they are hereby enjoined and required to execute the same by making the arrest, if the same can be done at any place within the county of Allegheny, and also by bringing such offender or offenders before the said aldermen or some of them.

SECTION 16. That it shall and may be lawful for the said alderman before whom any complaint, indictment, plea, matter or thing of a criminal or civil nature, within his or their jurisdiction shall be made, or depending, to issue their subpoena in common form to any person or persons within this commonwealth, commanding him or them to appear and give evidence therein, and every person to whom the same shall be directed and on whom service thereof shall be duly made, shall attend accordingly and give evidence under such pains and penalties as are by law incurred by any person or persons refusing to attend and give evidence when duly subpoenaed for that purpose.

SECTION 17. That the mayor and aldermen, or any of them shall and may take and receive the acknowledgement and probate of all deeds and written instruments and receive the legal fees therefor, which acknowledgements and probates shall be as valid, and have the like force and effect as if the same were acknowledged before a judge of the Supreme Court, or any judge of the court of Common Pleas within this commonwealth.

SECTION 18. That it shall be lawful for the select and common councils, when duly assembled, from time to time, by any ordinance duly enacted, to vest in the mayor of said city for the time being the appointment of such officers within the said city as they may think expedient for the well-ordering and governing the same, and to remove the same from such offices or appointments for misbehavior or otherwise may be necessary, all which officers shall take an oath or affirmation

before the said mayor or alderman, well and faithfully to perform the duties of the offices or appointments to them respectfully committed, and the said councils may require security to be given by such officers or any of them, and prescribe the sum and the form in which such security shall be given; and the said officers and their securities may be sued and recovery had against them for breach of official duty, and for the recovery of fines, forfeitures, penalties, debts and other demands, the ordinary forms of law shall be pursued in the process, judgment and several kinds of execution.

SECTION 19. That no alderman of the said city, nor any person holding an office of trust or profit under the laws of this commonwealth, or the ordinances of the select and common councils, the emoluments whereof are paid out of the Treasury of said city shall be competent to serve as a member of the select or common councils.

SECTION 20. That all the property and estate whatever, real and personal, of the borough of Allegheny, are hereby vested in the corporation or body politic of the city of Allegheny, and their successors in and by this act established by the name, style and title aforesaid, to and for the use and benefit of the said citizens forever, and until the corporation of the said city shall be duly organized under this act, the present charter of the borough of Allegheny shall continue in full force and operation, and all officers under the same shall be appointed, and hold their offices as they now may, or can do by law, and as soon as this act shall go into operation, all suits, prosecutions, debts and claims whatever, shall by force thereof, become transferred to the said city, and be under the management and control thereof, as fully and completely as if no alteration had been made in the said charter.

SECTION 21. That the said select and common councils shall once in every year cause to be published, a just and true account of all the moneys which shall have accrued

to them in their corporate capacity during the year preceding such publication, and also of the disposition thereof.

SECTION 22. That this act and the powers and authorities herein vested in the said city, shall not be impaired, affected, defeated or destroyed, by any neglect or omission to appoint all, or any of its officers at the time, or times allotted for the same, and in the case of any such defect or omission, the burgess of the borough or the mayor of the said city, as the case may be, or in default of either of the two former, the aldermen or a majority of them shall forthwith take all necessary measures to cure and supply such defects and omissions, giving at least twenty days notice thereof, in the public newspapers of the said city, or if there shall be no newspaper published therein, by written handbills posted up at the most conspicuous place within the boundaries of the said corporation.

SECTION 23. That no inhabitant of the said city of Allegheny, otherwise competent to give testimony, shall be excluded from being a witness in any court of this commonwealth, by reason of his residence in the said city, and being subject to taxation therein, or by reason of any interest which he has, or may have in the common or public ground in said city, or by reason of any interest which the said city now has, or may hereafter have in any ground granted for public purposes, which is or may become the subject of suit, and in which any such inhabitant may be called to give testimony.

SECTION 24. The legislature reserves the right to alter, amend or revoke, any part of, or the whole of this charter at any time, when it may be deemed expedient.

WM. HOPKINS,
Speaker of the House of Representatives.
W. T. RODGERS,
Speaker of the Senate.

Approved—The thirteenth day of April, one thousand eight hundred and forty.

DAVID R. PORTER.

AN ACT

Annexing a portion of Duquesne Borough to Allegheny City.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the boundaries of the City of Allegheny in the County of Allegheny, shall be extended so as to embrace all that portion of the borough of Duquesne that lies southwest of a line drawn from the head of Herr's island, in said borough, to the run at Willow Grove brewery, thence by said run to the boundary line of Duquesne borough and Reserve Township.

SECTION 2. That from and after the passage of this act all the powers conferred upon said city by the various acts of assembly be and the same are hereby extended to and over the inhabitants and territory hereby annexed, together with all the ordinances now in force in said city.

SECTION 3. That the act of assembly incorporating the Borough of Duquesne is hereby suspended over that portion of said borough that lies within the above described boundaries: *Provided,* That said borough shall continue to exist as a corporation for a period of thirty days, to enable the officers of the borough to settle the business of said borough and to adjust and divide the property, claims and debts of said borough, so that the part remaining as the borough of Duquesne and the part annexed shall each receive their due proportion of property, and pay their due proportion of debts respectively, based upon the county valuation of the said borough.

SECTION 4. That within thirty (30) days after the passage of this act the mayor of the city of Allegheny shall issue his proclamation, ordering the election of the requisite number of councilmen to represent the districts in the councils of said city, namely: three (3) select councilmen, one (1) for one (1) year, one (1) for two years, and one (1) for three (3) years, and four (4) common councilmen.

SECTION 5. That so much of any act or acts as are inconsistent with the provisions of this act be and the same are hereby repealed.

Approved the eighteenth day of March, Anno Domini one thousand eight hundred and sixty-eight.

AN ACT

For the extension of the City of Allegheny.

SECTION 1. *Be it enacted by the Senate and House of Represenatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That all that part or portion of McClure township, in Allegheny county, lying south of the Pittsburg, Fort Wayne and Chicago railroad, commencing at the line of Allegheny city and running south of said railroad down to Jack's run, said run being the dividing line between McClure and Ross townships, is hereby annexed to the city of Allegheny, and to be known as a ward of said city.

SECTION 2. That the qualified voters of said new ward, upon the day set apart by law for holding municipal elections in the city of Allegheny, shall proceed to hold an election and elect councilmen, aldermen and all other officers that is or may be provided by law; and said ward shall have and possess all the powers and privileges conferred upon other wards of said city, and be subject to laws and ordinances of said city: *Provided,* That none of the provisions of this act shall go into effect until the first day of October, one thousand eight hundred and seventy.

SECTION 3. The school directors of McClure township in the remaining part of said township, or the part annexed to the city of Allegheny, if they cannot amicably agree upon an equitable division of the school property as it stood in said township at and before the passage of this act, shall

apply to the court of common pleas of Allegheny County, who shall appoint three disinterested freeholders, according to the manner and form specified in section second of the Act approved the eighteenth day of March, Anno Domini one thousand eight hundred and sixty-nine; and the whole proceeding to final judgment shall follow the form prescribed by said act of eighteenth March, Anno Domini one thousand eight hundred and sixty-nine relating to the division of school property in the division of old wards in the city of Allegheny.

SECTION 4. That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved the twenty-eighth day of March, Anno Domini one thousand eight hundred and seventy.

AN ACT

Annexing a part of Reserve township to the city of Allegheny.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That that part of Reserve township, known and described as follows, be annexed to the city of Allegheny: Beginning at the centres of Spring Garden avenue and Wickline's lane; thence along said Wickline's lane to the Troy Hill road; thence along said Troy Hill road to Lowrie's lane; thence along said Lowrie's lane to a point where A. N. Burchfield's east line continued northwardly would intersect said Lowrie's lane; thence by said prolongation to A. N. Burchfield's east line southwardly to the continuation of Lowrie Street; thence west along said Lowrie Street to the city line; thence by said city line northwesterly to Spring Garden avenue and Wickline's lane, the place of beginning.

SECTION 2. The school directors of Reserve township in the remaining part of said township, or the part annexed to the city of Allegheny, if they cannot amicably agree upon an equitable division of the school property as it stood in said township at and before the passage of this act, shall apply to the court of common pleas of Allegheny county, who shall appoint three disinterested freeholders, according to the manner and form specified in section second of the act approved the eighteenth day of March, Anno Domini one thousand eight hundred and sixty-nine, and the whole proceeding to final judgment shall follow the form prescribed by said act of eighteenth March, Anno Domini one thousand eight hundred and sixty-nine, relating to the division of school property in the division of old wards in the city of Allegheny.

SECTION 3. That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved the fourth day of April, Anno Domini one thousand eight hundred and seventy-two.

AN ACT

Annexing the township of McClure, in the County of Allegheny, to the City of Allegheny.

SECTION 1. *Be it enacted, &c.,* That all the territory embraced within the present line of the township of McClure, in the county of Allegheny, is hereby annexed to the city of Allegheny, and shall constitute a ward of said city.

SECTION 2. That within thirty days from the approval of this act, it shall be the duty of the mayor of said city to issue his proclamation for an election to be held not less than ten days after the issuing of said proclamation, at which election the qualified voters of said ward shall elect two persons to represent said ward in the select council of

said city, the person receiving the highest number of votes to be entitled to the long term, and the person receiving the next highest number of votes to be entitled to the short term; and at the said election there shall also be elected two persons to represent said ward in the common council of said city until the organization of the new council in one thousand eight hundred and seventy-four.

SECTION 3. That all the laws and ordinances of said city are hereby extended over the territory hereby annexed.

Approved the 15th day of April, A. D. 1873.

For Act of March 31, 1870, see Appendix of Paper Book of Plaintiff in error in opposition to motion to dismiss or affirm.

HUNTER v. CITY OF PITTSBURGH.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

No. 264. Argued October 25, 28, 1907.—Decided November 18, 1907.

The policy, wisdom, justice and fairness of a state statute, and its conformity to the state constitution are wholly for the legislature and the courts of the State to determine, and with those matters this court has nothing to do.

The Fifth Amendment to the Federal Constitution is not restrictive of state, but only of national, action.

There is no contract, within the meaning of the contract clause of the Federal Constitution, between a municipality and its citizens and taxpayers that the latter shall be taxed only for the uses of that corporation and not for the uses of any like corporation with which it may be consolidated.

Municipal corporations are political subdivisions of the State, created by it and at all times wholly under its legislative control; their charters, and the laws conferring powers on them, do not constitute contracts with the State within the contract clause of the Federal Constitution; nor are a municipality and its citizens or taxpayers deprived of its or their property without due process of law, nor is such property taken without compensation, by reason of any legislative action of the State in regard to the property held by such municipality for governmental purposes, or as to the territorial area of such municipality, or the consolidation thereof with another city, or the repeal or alteration of its charter.

The act of February 7, 1906 of Pennsylvania providing for the union of contiguous municipalities, under which the cities of Pittsburgh and Allegheny were consolidated, is not unconstitutional as depriving the City of Allegheny or the citizens and taxpayers thereof of their property without due process of law, or because it takes property without compensation or because it impairs any contract between the City of Allegheny and the State or the City of Allegheny and its citizens and taxpayers.

A LAW of the State of Pennsylvania (February 7, 1906), provides for the union of cities, which are contiguous or in close proximity, by the annexation of the lesser to the larger. The parts of that law material to this decision follow, Pennsylvania Laws, 1906, p. 7:

"SEC. 1. Be it enacted, etc., That wherever in this Common-

wealth, now or hereafter, two cities shall be contiguous or in close proximity to each other, the two, with any intervening land other than boroughs, may be united and become one by annexing and consolidating the lesser city, and the intervening land other than boroughs, if any, with the greater city, and thus making one consolidated city, if at an election, to be held as hereinafter provided, there shall be a majority of all the votes cast in favor of such union.

"SEC. 2. The councils of either of said cities may by ordinance direct that a petition be filed in the court of quarter sessions of the county in which said cities are situate, or two per centum of the registered voters of either of said cities may present their petition to said court, praying that the two cities, and any intervening land other than boroughs, shall be united and become one city. Thereupon the said petition shall be filed; and the court shall fix a time for the hearing thereof, not more than twenty days thereafter, and direct that notice be given to the mayor or chief executive officer of each of the said cities, and the clerk of the councils of each of said cities, and by publication in one or more newspapers published in either of said cities, and such notice as the court may deem proper, including notice to one or more of the officers of whatever may be the municipal subdivision of the State in which any intervening land other than boroughs may lie.

"SEC. 4. Any person interested may file exceptions to said petition prior to the day fixed for hearing. At such hearing any person in interest shall be heard; but if the court shall find that the petition and proceedings are regular and in conformity with this act, it shall order an election to be held in such cities, to vote for or against the proposed consolidation, at which all the legal voters of either of said cities, and of the said intervening land, if any, shall be qualified to vote.

* * * * * * * *

"SEC. 7. If it shall appear by the vote, when computed and certified as [provided in section 6], that a majority of all the lawful voters of the two cities and the intervening land, voting

upon such question, have voted in favor of the annexation or consolidation, the said court of quarter sessions shall enter a decree annexing and consolidating the lesser city, and any intervening land other than boroughs, with the greater city, so that they form but one city, and in the name of the greater or larger city;

* * * * * * * *

"SEC. 8. Each of the constituent cities, and the intervening land, if any, so consolidated, shall pay its own floating and bonded indebtedness and liabilities of every kind, and the interest thereon, as the same existed at the time of annexation; and the councils of the consolidated city shall levy, respectively, on the properties in each of the said cities and intervening land so consolidated, and as they existed at the time of annexation, a tax sufficient to provide funds for each to pay its own floating and bonded indebtedness and liabilities and interest, as the same may accrue. The court of quarter sessions is given jurisdiction to ascertain what the floating and bonded indebtedness, and liabilities, and properties, and assets, of each of the said cities and the said intervening land may be; due notice being given and an opportunity to be heard being allowed, to all parties in interest.

"SEC. 9. All the citizens of each of the united cities and of the intervening land shall be entitled to, and shall enjoy and exercise, full rights of citizenship in the said enlarged and consolidated city. All the rights of creditors and all liens, and all the rights of the constituent cities and the government of the intervening land, to enforce the payment of moneys due either, or of contract liabilities, or of other claims or rights of property, existing in either city or in the government of the intervening land at the time of annexation, shall be preserved unimpaired to each; and each of the said cities and the government of the intervening land, for the purpose of enforcing its rights and claims in the premises, and also of having prior rights and claims enforced against it, shall be deemed in law to continue in existence.

"Except as herein otherwise provided, all the property, real, personal and mixed, and rights and privileges of every kind, vested in or belonging to either of said cities or to the intervening land prior to and at the time of the annexation, shall be vested in and owned by the consolidated or united city;

* * * * * * * *

"All moneys accruing, from time to time, from delinquent taxes prior to the annexation, and all assessments against private property for public improvements for which the contractors shall have been paid, shall be applied to the indebtedness of the city to which the same shall belong. In case of annexation, the court may appoint commissioners to ascertain the floating and bonded indebtedness of each of the said municipal subdivisions, at the time of annexation, including the share of the municipal indebtedness for which any intervening land may be liable, and also an account of all property, of every kind, owned or claimed by the cities or the share of the intervening land to any property owned by the municipal subdivision of the State of which it is a part, prior to and at the time of annexation. The court may also order an account to be taken by the said commissioners of all moneys on hand or receivable, applicable to the payment of the floating or bonded indebtedness of the respective municipalities or of the intervening land, at the date of annexation. Such money shall be, respectively, applied in payment of the floating or bonded indebtedness of the respective municipalities or of the intervening land;

* * * * * * * *

"After the commissioners have made report, the court shall, by its decree, fix the said indebtedness and liabilities, and also the properties and assets, of all kinds, at the time of the annexation belonging to each territory united in the consolidation."

The City of Pittsburgh under the provision of this act filed in the Court of Quarter Sessions of Allegheny County a petition asking for the union of the City of Allegheny with the City of

Pittsburgh. The plaintiffs in error (except the City of Allegheny) seasonably filed exceptions to the petition under section 4 of the act. The parts of the exceptions material here are as follows:

"1st. That they are residents and citizens, voters, taxpayers and owners of real estate and personal property, within the City of Allegheny, County of Allegheny and State of Pennsylvania.

"4th. That the population of the City of Pittsburgh by the census of 1900 was 321,616 and that it has now a population of at least 350,000. That there were polled at the last mayoralty election in the said city, on February 20th, 1906, about 62,000 votes in round numbers.

"That the population of the City of Allegheny by the census of 1900 was 129,896, and that it is probably about 150,000 at the present time; that there were polled at the last mayoralty election in the said city, on February 20th, 1906, about 24,000 votes, in round numbers.

"6th. The City of Allegheny has improved its streets, established its own system of electric lighting; and has established a satisfactory water supply. The City of Pittsburgh is largely in debt; has established large and extensive parks in the eastern part of the city; built expensive and costly boulevards; extensive and costly reservoirs for the supply of water; and is contemplating still greater expenditures of money in the cutting down and grading of the elevation of Fifth Avenue, known as the hump; and the construction of an extensive filtration plant; and a large expenditure of money in the purchase of the Monongahela Water Company plant; a plant owned by a private corporation; and the further expensive construction of an electric light plant to be owned by the City of Pittsburgh, the said city owning at the present time no light plant, it being supplied with light from a private corporation; and the further expenditure of various sums of money for the acquirement of advantages and property which the citizens of Allegheny now practically own and enjoy but which the

citizens of Pittsburgh do not, and to acquire which would largely increase the indebtedness of the City of Pittsburgh, and if the City of Allegheny should be annexed to the City of Pittsburgh, the taxpayers of Allegheny, including your respondents, will, in addition to the payment of the taxes necessary to pay and liquidate their own indebtedness, have to bear and pay their proportion of the new indebtedness that must necessarily be created to acquire the facilities, properties and improvements, herein stated, in Pittsburgh; all of which would be of no benefit to the citizens and taxpayers of Allegheny, including your respondents who now own and possess these advantages and privileges; and which will largely and unnecessarily increase the taxes of your respondents, as well as the taxes of the other citizens of Allegheny, without any material benefit to them whatever.

"12th. The Act of Assembly under which this petition is filed for the annexation of the City of Allegheny to the City of Pittsburgh is in conflict with Article I, section 9, paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny, and for improvements, repairs and expenditures incidental to the government of the said City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of said Article I, section 9, paragraph 10, of the Constitution of the United States, and therefore is unconstitutional.

"13th. The Act of General Assembly under which this petition is filed, is in conflict with Article V of the amendments of the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case, it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property

of your respondents, and create additional burdens without compensation, and will depreciate the value of the property of your respondents, and they, therefore, will be deprived of their property, in violation of said Article V of the amendments to the Constitution of the United States.

"14th. The Act of Assembly under which this petition is filed is in conflict with Article XIV of the amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens, which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in the value of the property of your respondents.

"22nd. The Act of the General Assembly under which these proceedings are had is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower or outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city."

The City of Pittsburgh filed an answer to the exceptions, admitting some of the allegations contained therein and denying others. As nothing turns here upon the answer it need not be set forth. Thereupon there was a hearing in the case. No evidence on the issues of fact raised by the exceptions and the answer thereto was introduced, and no decision upon those issues was made. The court "dismissed" the exceptions, and ordered an election to be held as prayed for in the petition. At the election a majority of all the voters of the two cities voted in favor of the consolidation. It is agreed that the majority of the voters of the City of Allegheny voted against the consolidation, but that majority was overcome by a larger majority of the voters of the City of Pittsburgh in favor of the consolidation. The result of the election duly appearing to the

Court of Quarter Sessions, that court thereupon decreed that the two cities should be consolidated. The case was then taken by writ of error to the Superior Court of Pennsylvania, and the error assigned was the dismissal of the exceptions. In that court the City of Allegheny on its petition was permitted "to intervene and become one of the appellants in said proceedings." The Superior Court overruled the assignments of error and affirmed the decree. Thereupon the same assignments of error were made in the Supreme Court of Pennsylvania, where the case was taken by writ of error. That court dismissed the assignments of error, affirmed the decree and refused a motion for rehearing. A writ of error was then allowed by a justice of this court. The assignments in this court are as follows:

"First. The Supreme Court of the State of Pennsylvania erred in dismissing the fourth assignment of error of the plaintiffs in error, which is as follows:

"'The Act of the General Assembly under which these proceedings are had, is in violation of the law of the land, it being unfair, unjust and unequal; and is in conflict with the rights and privileges reserved by the people to themselves, in that it permits the qualified electors of the larger city to overpower and outnumber those of the lesser city, and to annex the lesser city without the vote or consent of a majority of the qualified electors of the lesser city.'

"Second. The Supreme Court of the State of Pennsylvania erred in dismissing the fifth assignment of error of the plaintiffs in error, which is as follows:

"'The Act of Assembly under which this petition is filed for annexing of the City of Allegheny to the City of Pittsburgh is in conflict with Article I, section 9, paragraph 10, of the Constitution of the United States, in that it impairs the obligations of the contract existing between the City of Allegheny and your respondents, by which they are to be taxed only for the government of the City of Allegheny and for improvements, repairs and expenditures incidental to the government of said

City of Allegheny, and the attempt to subject them to the increased taxes and burdens of an additional or enlarged city government, by legislation, is in violation of Article I, section 9, paragraph 10, of the Constitution of the United States, and therefore is unconstitutional.'

"Third. The Supreme Court of the State of Pennsylvania erred in dismissing the sixth assignment of error of the plaintiffs in error, which is as follows:

"'The Act of General Assembly under which this petition is filed is in conflict with Article V of the amendments of the Constitution of the United States, because if the City of Allegheny shall be annexed in pursuance of the petition filed in this case it will be depriving your respondents of their property without due process of law, and is therefore unconstitutional. Said annexation of the City of Allegheny to the City of Pittsburgh will add additional taxes to the property of your respondents, and create additional burdens without compensation, and will depreciate the sale of the property, in violation of said Article V of the amendments to the Constitution of the United States, and they, therefore, will be deprived of their property.'

"Fourth. The Supreme Court of the State of Pennsylvania erred in dismissing the seventh assignment of error of the plaintiffs in error, which is as follows:

"'The Act of Assembly under which this petition is filed is in conflict with Article XIV of the amendments to the Constitution of the United States, because the said annexation of the City of Allegheny to the City of Pittsburgh deprives your respondents of their property without due process of law. The additional taxes and burdens which the property of your respondents will have to bear in case the annexation takes place will cause a large depreciation in value of the property of your respondents.'

"Fifth. The Supreme Court of the State of Pennsylvania erred in not holding that the Act of the General Assembly of Pennsylvania, approved February 7, A. D. 1906, entitled 'An

act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to and from each,' was special or local legislation, and in conflict with Article 3, section 7, subdivision 2, of the constitution of the State of Pennsylvania, which constitutional provision provides that 'The General Assembly shall not pass any local or special law, regulating the affairs of counties, cities, townships, wards, boroughs, or school districts,' and the said Act of Assembly being in conflict with said provision of the constitution of the State of Pennsylvania, is not due process of law, and therefore is in conflict with the Fourteenth Amendment to the Constitution of the United States.

"Sixth. The Supreme Court of the State of Pennsylvania erred in not holding that the said Act of Assembly, entitled as aforesaid, was passed at an extraordinary or special session of the legislature, convened by the Governor of Pennsylvania under Article 4, section 12, of the constitution of Pennsylvania, which provides that the Governor may, on extraordinary occasions, convene the General Assembly; and that the subject of the said legislation or Act of Assembly, aforesaid, was not designated in the proclamation of the Governor calling such a session, or in the paper or proclamation issued by him dated January 9, 1906, and is therefore in conflict with Article 3, section 25, of the constitution of Pennsylvania, which provides that 'When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session,' and that the said Act of Assembly is, by reason thereof, not due process of law, and is in conflict with the Fourteenth Amendment to the Constitution of the United States.

"Seventh. The Supreme Court of Pennsylvania erred in

dismissing the exceptions filed by the plaintiffs in error, thereby confirming the judgment of the court below.

"Eighth. The Supreme Court of Pennsylvania erred in not entering judgment in favor of the plaintiffs in error and not reversing the judgment of the court below."

Mr. John G. Johnson and *Mr. William A. Stone* for plaintiffs in error:

The law in question herein is not just, fair or reasonable. The courts and not the legislature must determine whether the law is reasonable, and if it be unreasonable it is not due process of law. *Smyth* v. *Ames*, 169 U. S. 466; *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79.

The scheme, or trick, of the law is apparent. As it was expected by the framers of the law that Allegheny would vote against consolidation, they determined to neutralize the vote of Allegheny by the larger vote of Pittsburgh. The law gave them a vote, but by a scheme which destroyed it. Legislation which thus destroys the vote it allows is not fair, just and reasonable. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Capen* v. *Foster*, 12 Pick. 488; *People* v. *Solomon*, 51 Ills. Sup. Ct. Rep. 37.

The law in controversy is one providing for the consolidation of two cities, or the annexation of the lesser to the larger city, by the majority vote of the two cities. The larger city was almost unanimously in favor of annexing the smaller. The smaller city was almost as strongly opposed to such annexation. Under the color of giving the citizens affected a vote to determine the question a scheme was adopted and put into the law, which restrained the right to determine such by vote.

It is not usual to consolidate cities in this way, and such has not been the practice in Pennsylvania. The method provided by this statute is not the usual way in that State and is not due process of law.

We find in Pennsylvania no precedent for this law. On the contrary, whenever consolidation has been effected by a

vote of the people, each municipality has been given a separate vote, which separate vote if against consolidation, determined that the municipality so voting against consolidation should not be included in the scheme.

The question for this court here to determine is, not whether Pittsburgh and Allegheny ought to be consolidated; not whether the legislature has the power to consolidate them by an Act of Assembly; but whether the method adopted in the act in controversy is reasonable, usual, customary and just.

The act in question is not "due process of law," and, therefore, is in conflict with the Fourteenth Amendment, because it limits the power and jurisdiction of the courts simply to an inquiry whether the petition and the proceedings filed are regular and in conformity therewith.

The record also presents a case in which the City of Allegheny, being possessed of valuable property, which by its charter was vested in it for the use and benefit of its citizens forever, has been stripped of its property for the benefit of the City of Pittsburgh.

The fact that the City of Pittsburgh presented the petition for consolidation, and that such petition was opposed by the City of Allegheny from the outset, is inconsistent with the idea, appearing so often in the brief of defendant in error, to the effect that the latter city is the one benefited by the consolidation.

A municipal corporation may have rights of property vested in it for the benefit of its citizens of which it cannot be deprived without due process of law, without violating the Federal protection accorded to contracts.

The water and electric plants as well as other property which belongs to the City of Allegheny were held by it under the protection of the Federal Constitution. *New Orleans* v. *Water Works Co.*, 142 U. S. 91; *Powers* v. *Detroit &c. R. R. Co.*, 201 U. S. 543; *Graham* v. *Folsom*, 200 U. S. 248.

In the present case the charter is not amended, nor changed, nor revoked, but one city, without its consent, with all of its

property, is legislated into the greater city. While the legislature might amend, and perhaps revoke the charter of Allegheny, it could not pass the property of Allegheny over to Pittsburgh by law, as was attempted. *New Orleans* v. *Water Works Co.*, 142 U. S. 91; *Broome* v. *Furner*, 176 Massachusetts, 9; *Powers* v. *Detroit &c. R. R. Co.*, 201 U. S. 543.

Mr. W. B. Rodgers and *Mr. D. T. Watson*, with whom *Mr. J. Rodgers McCreery* and *Mr. John M. Freeman* were on the brief, for defendant in error:

A city is nothing but a municipal corporation of the State, made by the State for the purpose of administering and governing a certain locality. There is no contract relation between the city and the State; as the State made, she can destroy or take away, and the law of Pennsylvania, and indeed the decisions of this court show, that the State may add to a city, may take away from a city, may merge a city or a borough or two cities, or two townships, or two boroughs, and this without any intervention of the voters and even against the wishes of the majority of the voters within the territorial limits. As the State has the absolute power to do this, to merge or take away a charter, or to add additional territory, or take it away, it may select, at its own option, the plan under which it will be carried out, and the voters of the district have no voice whatever in the determination of that question, unless the State sees fit to delegate the same to them.

If the State has the absolute power to annex one city to another without consulting the people of either city, how is it possible to say that it cannot do so when a majority of all the people in the proposed greater city are in favor of it, simply because a majority of such people in either city oppose it? That majority could not prevent the State from acting.

How the question of merger between two cities shall be left to be determined by a majority of the voters of the lesser city is certainly something new in municipal law, and is wholly unsupported by any decided case that we have any knowledge of.

How, and under what circumstances a merger of two or more municipalities shall take place is for the State and the State alone to determine, and the question is purely legislative and not judicial, and before any claim can be made that the legislation is not due process of law, the facts must be shown to demonstrate that it deprives someone of life, liberty or property. *State of Ohio* v. *Cincinnati*, 52 Ohio St. 419; Cooley on Constitutional Limitations (6th Ed.), 228; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, 531.

The creation and consolidation of municipal corporations, the determination of their boundaries and the administration of their internal affairs, are matters peculiarly within the jurisdiction of the State. These are questions upon which the determination of the state authorities will be accepted by the Federal courts as authoritative and controlling. *Forsyth* v. *Hammond*, 166 U. S. 506, 518; *Williams* v. *Eggleston*, 170 U. S. 304; *Kelly* v. *Pittsburgh*, 104 U. S. 78, 81; *Wilson* v. *North Carolina*, 169 U. S. 586, 593; *Claiborne County* v. *Brooks*, 111 U. S. 400, 410; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514; *Laramie County* v. *Albany Co.*, 92 U. S. 307; *Covington* v. *Kentucky*, 173 U. S. 231.

MR. JUSTICE MOODY, after making the foregoing statement of the case, delivered the opinion of the court.

The plaintiffs in error seek a reversal of the judgment of the Supreme Court of Pennsylvania, which affirmed a decree of a lower court, directing the consolidation of the cities of Pittsburgh and Allegheny. This decree was entered by authority of an act of the General Assembly of that State, after proceedings taken in conformity with its requirements. The act authorized the consolidation of two cities, situated with reference to each other as Pittsburgh and Allegheny are, if upon an election the majority of the votes cast in the territory comprised within the limits of both cities favor the consolidation, even though, as happened in this instance, a majority

of the votes cast in one of the cities oppose it. The procedure prescribed by the act is that after a petition filed by one of the cities in the Court of Quarter Sessions, and a hearing upon that petition, that court, if the petition and proceedings are found to be regular and in conformity with the act, shall order an election. If the election shows a majority of the votes cast to be in favor of the consolidation, the court "shall enter a decree annexing and consolidating the lesser city . . . with the greater city." The act provides, in considerable detail, for the effect of the consolidation upon the debts, obligations, claims and property of the constituent cities; grants rights of citizenship to the citizens of those cities in the consolidated city; enacts that "except as herein otherwise provided, all the property . . . and rights and privileges . . . vested in or belonging to either of said cities . . . prior to or at the time of the annexation, shall be vested in and owned by the consolidated or united city," and establishes the form of government of the new city. This procedure was followed by the filing of a petition by the City of Pittsburgh; by an election in which the majority of all the votes cast were in the affirmative, although the majority of all the votes cast by the voters of Allegheny were in the negative, and by a decree of the court uniting the two cities.

Prior to the hearing upon the petition the plaintiffs in error, who were citizens, voters, owners of property and taxpayers in Allegheny, filed twenty-two exceptions to the petition. These exceptions were disposed of adversely to the exceptants by the Court of Quarter Sessions, and the action of that court was successively affirmed by the Superior and Supreme courts of the State. The case is here upon writ of error, and the assignment of errors alleges that eight errors were committed by the Supreme Court of the State. This assignment of errors is founded upon the dispositions by the state courts of the questions duly raised by the filing of the exceptions under the provisions of the Act of the Assembly.

The defendants in error moved to dismiss the case because

no Federal question was raised in the court below or by the assignments of error, or, if any Federal question was raised, because it was frivolous. This motion must be overruled. The plaintiffs in error claimed that the Act of Assembly was in violation of the Constitution of the United States, and specially set up and claimed in the court below rights under several sections of that Constitution, and all their claims were denied by that court. These rights were claimed in the clearest possible words, and the sections of the Constitution relied upon were specifically named. The questions raised by the denial of these claims are not so unsubstantial and devoid of all color of merit that we are warranted in dismissing the case without consideration of their merits.

Some part of the assignments of error and of the arguments in support of them may be quickly disposed of by the application of well-settled principles. We have nothing to do with the policy, wisdom, justice or fairness of the act under consideration; those questions are for the consideration of those to whom the State has entrusted its legislative power, and their determination of them is not subject to review or criticism by this court. We have nothing to do with the interpretation of the constitution of the State and the conformity of the enactment of the Assembly to that constitution; those questions are for the consideration of the courts of the State, and their decision of them is final. The Fifth Amendment to the Constitution of the United States is not restrictive of state, but only of national, action.

After thus eliminating all questions with which we have no lawful concern, there remain two questions which are within our jurisdiction. There were two claims of rights under the Constitution of the United States which were clearly made in the court below and as clearly denied. They appear in the second and fourth assignments of error. Briefly stated, the assertion in the second assignment of error is that the Act of Assembly impairs the obligation of a contract existing between the City of Allegheny and the plaintiffs in error, that the latter

are to be taxed only for the governmental purposes of that city, and that the legislative attempt to subject them to the taxes of the enlarged city violates Article I, section 9, paragraph 10, of the Constitution of the United States. This assignment does not rest upon the theory that the charter of the city is a contract with the State, a proposition frequently denied by this and other courts. It rests upon the novel proposition that there is a contract between the citizens and taxpayers of a municipal corporation and the corporation itself, that the citizens and taxpayers shall be taxed only for the uses of that corporation, and shall not be taxed for the uses of any like corporation with which it may be consolidated. It is not said that the City of Allegheny expressly made any such extraordinary contract, but only that the contract arises out of the relation of the parties to each other. It is difficult to deal with a proposition of this kind except by saying that it is not true. No authority or reason in support of it has been offered to us, and it is utterly inconsistent with the nature of municipal corporations, the purposes for which they are created, and the relation they bear to those who dwell and own property within their limits. This assignment of error is overruled.

Briefly stated, the assertion in the fourth assignment of error is that the Act of Assembly deprives the plaintiffs in error of their property without due process of law, by subjecting it to the burden of the additional taxation which would result from the consolidation. The manner in which the right of due process of law has been violated, as set forth in the first assignment of error and insisted upon in argument, is that the method of voting on the consolidation prescribed in the act has permitted the voters of the larger city to overpower the voters of the smaller city, and compel the union without their consent and against their protest. The precise question thus presented has not been determined by this court. It is important, and, as we have said, not so devoid of merit as to be denied consideration, although its solution by principles long settled and constantly acted upon is not difficult. This court

has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. *Maryland* v. *Balt. & Ohio Railroad*, 3 How. 534, 550; *East Hartford* v. *Hartford Bridge Company*, 10 How. 511, 533, 534, 536; *United States* v. *Railroad Company*, 17 Wall. 322, 329; *Laramie County* v. *Albany County*, 92 U. S. 307, 308, 310–312; *Commissioners* v. *Lucas*, 93 U. S. 108, 114; *New Orleans* v. *Clark*, 95 U. S. 644, 654; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, 524, 525, 531, 532; *Meriwether* v. *Garrett*, 102 U. S. 472, 511; *Kelly* v. *Pittsburgh*, 104 U. S. 78, 80; *Forsyth* v. *Hammond*, 166 U. S. 506, 518; *Williams* v. *Eggleston*, 170 U. S. 304, 310; *Covington* v. *Kentucky*, 173 U. S. 231, 241; *Worcester* v. *Worcester Street Railway Company*, 196 U. S. 539, 549; *Kies* v. *Lowrey*, 199 U. S. 233. It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part

of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it.

Applying these principles to the case at bar, it follows irresistibly that this assignment of error, so far as it relates to the citizens who are plaintiffs in error, must be overruled.

It will be observed that in describing the absolute power of the State over the property of municipal corporations we have not extended it beyond the property held and used for governmental purposes. Such corporations are sometimes authorized to hold and do hold property for the same purposes that property is held by private corporations or individuals. The distinction between property owned by municipal corporations in their public and governmental capacity and that owned by them in their private capacity, though difficult to define, has been approved by many of the state courts (1 Dillon, Municipal Corporations, 4th ed., sections 66 to 66*a*, inclusive, and cases cited in note to 48 L. R. A. 465), and it has been held that as to the latter class of property the legislature is not omnipotent. If the distinction is recognized it suggests the question whether property of a municipal corporation owned in its private and proprietary capacity may be taken from it against its will and without compensation. Mr. Dillon

says truly that the question has never arisen directly for adjudication in this court. But it and the distinction upon which it is based has several times been noticed. *Commissioners* v. *Lucas*, 93 U. S. 108, 115; *Meriwether* v. *Garrett*, 102 U. S. 472, 518, 530; *Essex Board* v. *Skinkle*, 140 U. S. 334, 342; *New Orleans* v. *Water Works Co.*, 142 U. S. 79, 91; *Covington* v. *Kentucky*, 173 U. S. 231, 240; *Worcester* v. *Street Railway Co.*, 196 U. S. 539, 551; *Monterey* v. *Jacks*, 203 U. S. 360. Counsel for plaintiffs in error assert that the City of Allegheny was the owner of property held in its private and proprietary capacity, and insist that the effect of the proceedings under this act was to take its property without compensation and vest it in another corporation, and that thereby the city was deprived of its property without due process of law in violation of the Fourteenth Amendment. But no such question is presented by the record, and there is but a vague suggestion of facts upon which it might have been founded. In the sixth exception there is a recital of facts with a purpose of showing how the taxes of the citizens of Allegheny would be increased by annexation to Pittsburgh. In that connection it is alleged that while Pittsburgh intends to spend large sums of money in the purchase of the water plant of a private company and for the construction of an electric light plant, Allegheny "has improved its streets, established its own system of electric lighting, and established a satisfactory water supply." This is the only reference in the record to the property rights of Allegheny, and it falls far short of a statement that that city holds any property in its private and proprietary capacity. Nor was there any allegation that Allegheny had been deprived of its property without due process of law. The only allegation of this kind is that the taxpayers, plaintiffs in error, were deprived of their property without due process of law because of the increased taxation which would result from the annexation—an entirely different proposition. Nor is the situation varied by the fact that, in the Superior Court, Allegheny was "permitted to intervene and become one of the appellants."

The city made no new allegations and raised no new questions, but was content to rest upon the record as it was made up. Moreover, no question of the effect of the act upon private property rights of the City of Allegheny was considered in the opinions in the state courts or suggested by assignment of errors in this court. The question is entirely outside of the record and has no connection with any question which is raised in the record. For these reasons we are without jurisdiction to consider it, *Dewey* v. *Des Moines*, 173 U. S. 193; *Harding* v. *Illinois*, 196 U. S. 78, and neither express nor intimate any opinion upon it.

The judgment is

Affirmed.